

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

-----  
SAN DIEGO CITY EMPLOYEES' )  
RETIREMENT SYSTEM, by )  
and through its Board of )  
Administration, )  
 )  
Plaintiffs, ) NO. GIC841845,  
 ) (Consolidated with  
 ) 852100, 851286)  
 )  
v. )  
SAN DIEGO CITY ATTORNEY MICHAEL )  
J. AGUIRRE; THE CITY OF SAN )  
DIEGO, and DOES 1-100, )  
 )  
Defendants. )  
-----  
AND RELATED CROSS-ACTIONS. )  
-----

VIDEOTAPED DEPOSITION OF: STEVEN C. GABRIELSON

TAKEN ON: TUESDAY, OCTOBER 17, 2006

TAKEN AT: 750 B STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA

REPORTED BY: JEANNETTE K. JESSUP  
CSR NO. 8573, CRR

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15 BY: JOEL KLEVENS, ESQ.  
16  
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22 BY: WALTER C. CHUNG, DEPUTY CITY ATTORNEY  
23  
24 ALSO PRESENT: Joseph Esuchanko  
25 Christian Teare, AJL

2

1 SAN DIEGO, CA; TUESDAY, OCTOBER 17, 2006; 10:06 A.M.  
2  
3 THE VIDEOGRAPHER: Good morning. We are on 10:06:32  
4 the record. This is the videotape deposition of Steven 10:06:33  
5 Gabrielson taken in the matter of San Diego City 10:06:37  
6 Employees Retirement System, et al., versus San Diego 10:06:40  
7 City Attorney, Michael Aguirre, et al., and related 10:06:43  
8 cases. San Diego Superior Court, consolidated cases. 10:06:47  
9 GIC841845, 852100, and 851286. Today we're in the law 10:06:52  
10 offices of Seltzer, Caplan, McMahon, Vitek. 750 B 10:07:01  
11 Street, 21st Floor, in San Diego. Today's date is 10:07:08  
12 Tuesday, October 17th, 2006. And the time is 10:06 a.m. 10:07:11  
13 My name is Christian Teare. I'm with the firm of AJL 10:07:16  
14 Litigation Media, 402 West Broadway, Suite 840, in San 10:07:20  
15 Diego. The certified shorthand reporter is Jeannette 10:07:24  
16 Jessup with Legalink in San Diego. 10:07:27  
17 Video and audio recording will be taking place 10:07:31  
18 at all times during this deposition unless counsel have 10:07:34  
19 specifically requested to go off the record. If counsel 10:07:37  
20 would please state their appearances, the reporter will 10:07:41  
21 swear in the witness. 10:07:44  
22 MR. KLEVENS: Joel Klevens for intervenor San 10:07:45  
23 Diego City Firefighters Local 145. 10:07:49  
24 MR. LEONE: Mike Leone for SDCERS. 10:07:51  
25 MR. CHUNG: Walter Chung for the City of San 10:07:53

4

1 I N D E X  
2  
3  
4 WITNESS EXAMINED BY PAGE  
5  
6 STEVEN C. GABRIELSON Mr. Klevens 5, 167  
7 Mr. Chung 164  
8  
9

10 E X H I B I T S  
11  
12 NUMBER DESCRIPTION PAGE  
13 600 Defendants' Supplemental Expert  
14 Designation 12  
15  
16 601 Curriculum Vitae 13  
17  
18 602 Binder of documents relied on 29  
19  
20 602-A Excerpts of binder 89  
21  
22  
23  
24  
25

3

1 Diego and San Diego City Attorney Michael Aguirre. Also 10:07:56  
2 present with the City of San Diego is Joe Esuchanko, a 10:08:00  
3 designated expert in this case. 10:08:08  
4 10:08:08  
5 STEVEN C. GABRIELSON, 10:08:08  
6 Defense witness, having been duly sworn, testifies as 10:08:08  
7 follows: 10:08:08  
8 10:08:12  
9 EXAMINATION BY MR. KLEVENS: 10:08:12  
10 Q. Sir, would you state your full name for the 10:08:14  
11 record, please. 10:08:15  
12 A. Steven Carl Gabrielson. 10:08:16  
13 Q. And, Mr. Gabrielson, you've given deposition 10:08:18  
14 before? 10:08:23  
15 A. I have. 10:08:24  
16 Q. On how many occasions? 10:08:24  
17 A. At least 100. 10:08:26  
18 Q. And you're familiar with the admonitions 10:08:27  
19 normally given? 10:08:33  
20 A. Yes. 10:08:34  
21 Q. And no need to go through those again? 10:08:35  
22 A. That's correct. 10:08:37  
23 MR. CHUNG: Actually, Counsel, if I can 10:08:38  
24 interrupt for one second. Mr. Gabrielson asked if I 10:08:40  
25 could at the start -- if we could take a break every 10:08:42

5

1 60 minutes. He has a tough time sitting for prolonged	10:08:45	1 A. A court case?	10:12:22
2 positions because of his back. And if we could take a	10:08:49	2 Q. Yes.	10:12:26
3 lunch break at 12:30, as I have a conference call at	10:08:51	3 A. No.	10:12:27
4 12:45.	10:08:55	4 Q. So you've never served as an expert in a case	10:12:27
5 MR. KLEVENS: Okay.	10:08:56	5 involving a public pension plan?	10:12:31
6 MR. CHUNG: Thank you.	10:08:59	6 A. No.	10:12:33
7 BY MR. KLEVENS:	10:09:00	7 Q. Have you ever had a -- an assignment other	10:12:33
8 Q. You say you've given at least 100 depositions;	10:09:00	8 than one involving litigation in which you represented a	10:12:48
9 is that right?	10:09:03	9 public pension plan?	10:12:54
10 A. Yes.	10:09:03	10 A. Myself personally?	10:12:55
11 Q. How many times have you represented a public	10:09:04	11 Q. Yes.	10:12:58
12 entity?	10:09:11	12 A. Not that I recall.	10:12:58
13 A. Would the U.S. Department of Justice qualify	10:09:12	13 Q. Have you ever had an assignment before that	10:13:05
14 as a public entity?	10:09:22	14 involved a public pension plan of any kind, any	10:13:14
15 Q. Yes.	10:09:24	15 assignment, whether litigation or otherwise?	10:13:18
16 A. I believe one previous time.	10:09:25	16 A. Not that I recall.	10:13:21
17 Q. And what was that?	10:09:26	17 Q. Have you had assignments involving private	10:13:25
18 A. That was a case several years ago involving a	10:09:29	18 pension plans?	10:13:53
19 mobile home park.	10:09:37	19 A. And, again, you're speaking strictly in the	10:13:53
20 Q. And what public entity?	10:09:39	20 context of litigation?	10:14:03
21 A. United States Department of Justice.	10:09:45	21 Q. Well, both. But let's start with litigation.	10:14:05
22 Q. What was the nature of the proceeding?	10:09:48	22 A. Yes.	10:14:09
23 A. I believe it had to do with a civil rights	10:09:51	23 Q. What was that?	10:14:19
24 issue dealing with individuals that were interested in	10:10:01	24 A. It was The First Pension case.	10:14:21
25 renting at the property.	10:10:08	25 Q. That's what it was called, The First Pension	10:14:26
	6		8
1 Q. What work did you do?	10:10:14	1 case?	10:14:29
2 A. I don't recall specifically. It had to do	10:10:15	2 A. Yes.	10:14:29
3 with some sort of a financial analysis.	10:10:19	3 MR. CHUNG: Full name of the corporation was	10:14:31
4 Q. And your client was the Department of Justice?	10:10:25	4 First Pension Corporation.	10:14:33
5 A. Yes.	10:10:35	5 BY MR. KLEVENS:	10:14:37
6 Q. Was the government the defendant in the case?	10:10:35	6 Q. And when was that?	10:14:37
7 A. I don't recall.	10:10:37	7 A. The year 2000. Case actually started in 1999	10:14:39
8 Q. How long ago was the case?	10:10:39	8 and went to trial in 2000.	10:14:44
9 A. I would say five to eight years ago, roughly.	10:10:40	9 Q. And what was your assignment?	10:14:46
10 Q. How much of your work is involved in being an	10:10:49	10 A. I was the causation witness on behalf of	10:14:47
11 expert witness?	10:10:54	11 approximately 325 plaintiffs that had lost all or part	10:14:56
12 A. During what time period?	10:10:55	12 of their retirement savings. I was also a damages	10:15:04
13 Q. Presently.	10:10:56	13 witness.	10:15:13
14 A. I'll give you this answer, Counsel. I don't	10:10:57	14 Q. Have you ever been involved -- aside from that	10:15:13
15 know what "presently" means. In the last five years my	10:11:06	15 case, is it -- have you had work involving private	10:15:32
16 time in litigation matters ranges from a low of 10 to	10:11:09	16 pension plans?	10:15:35
17 720 percent, to a high of 40 to 50 percent.	10:11:15	17 A. Yes.	10:15:38
18 Q. And what -- in the last five years what has	10:11:19	18 Q. Just not litigation?	10:15:39
19 your other work consisted of?	10:11:41	19 A. Correct.	10:15:43
20 A. Income tax work, estate tax work, business	10:11:43	20 Q. And what was the nature of your work involving	10:15:43
21 valuation, general consulting and firm administration.	10:11:48	21 private pension plans that did not involve litigation?	10:15:47
22 I also have work that I do in connection with financial	10:12:07	22 A. One of my specialties starting in 1974 and	10:15:50
23 statements and mergers and acquisitions.	10:12:09	23 continuing on for at least 15 years was working with	10:15:54
24 Q. Have you ever had a case involving a public	10:12:16	24 private retirement plans.	10:16:00
25 pension plan?	10:12:21	25 Q. Doing what?	10:16:01
	7		9

1 A. Assisting them with interpreting the tax code.	10:16:06	1 A. I wouldn't -- I wouldn't necessarily state any	10:19:51
2 Doing calculations in connection with controversies that	10:16:18	2 particular area.	10:19:55
3 might arise if someone retired and there was a	10:16:22	3 Q. And this year you're -- what would be your	10:19:56
4 difference of opinion as to how much that person should	10:16:28	4 estimate of the amount of your practice that's involved	10:20:20
5 be paid or when they should be paid.	10:16:30	5 in litigation consulting as opposed to other accounting	10:20:23
6 Q. Which private pension plans did you represent?	10:16:35	6 work?	10:20:28
7 A. I wouldn't be able to give you a list. But I	10:16:46	7 A. I haven't actually calculated that. But I	10:20:28
8 would say there's at least 20.	10:16:51	8 would say roughly 50 percent. Actually, that's probably	10:20:33
9 Q. And you say that was a period of about	10:16:54	9 high, as I think about it. When you say "this year,"	10:20:46
10 15 years ending around 1990?	10:17:07	10 are you talking this calendar year or the last	10:20:49
11 A. Approximately. It started with the Pension	10:17:12	11 12 months?	10:20:52
12 Reform Act of 1974.	10:17:15	12 Q. Yeah. Let's say the last 12 months.	10:20:52
13 Q. Why did -- why did it end around 1990?	10:17:17	13 A. 50 percent would be high. It's probably more	10:20:54
14 A. I was just too busy doing other things.	10:17:21	14 like a third.	10:20:58
15 Q. So you -- you ceased your practice involving	10:17:27	15 Q. Have there been years where your litigation	10:21:00
16 private pension plans?	10:17:36	16 work has exceeded 50 percent?	10:21:08
17 A. Well, when you say "you ceased your practice,"	10:17:37	17 A. One time.	10:21:10
18 are you talking about me personally or our firm?	10:17:42	18 Q. When was that?	10:21:10
19 Q. Both.	10:17:44	19 A. The year 2000.	10:21:14
20 A. Okay. I did not officially cease my practice,	10:17:45	20 MR. KLEVENS: Mark as Exhibit 600 Defendants'	10:21:32
21 but others in the firm gradually took over what I did.	10:17:48	21 Supplemental Expert Designation.	10:21:38
22 Our firm has an extensive practice representing private	10:17:51	22 (Exhibit 600 was marked for identification.)	10:21:54
23 plans.	10:17:55	23 MR. KLEVENS: Can you look over --	10:21:54
24 Q. So the firm still does that work?	10:17:56	24 MR. CHUNG: Yeah.	10:21:56
25 A. Yes.	10:18:00	25 MR. KLEVENS: Do you need that? Do you want	10:21:56
	10		12
1 Q. How long have you been in the litigation	10:18:00	1 this other one?	10:21:59
2 consulting business?	10:18:13	2 MR. CHUNG: Good. Thanks.	10:22:00
3 A. To the best of my recollection, the first case	10:18:15	3 BY MR. KLEVENS:	10:22:12
4 I did was the summer of 1984.	10:18:18	4 Q. If you look at Exhibit D, which is toward the	10:22:12
5 Q. And is your litigation consulting business in	10:18:25	5 back of the document --	10:22:16
6 any particular area of specialization?	10:18:33	6 A. Yes. I have that.	10:22:22
7 A. There's several different areas listed on my	10:18:35	7 Q. Is that your current C.V.?	10:22:25
8 C.V. in which I've testified.	10:18:40	8 A. No.	10:22:28
9 Q. Is there -- are there particular areas that	10:18:42	9 Q. Do you have your current C.V.?	10:22:29
10 you focus on in your litigation work, or is it the whole	10:18:51	10 A. I do.	10:22:38
11 list that's on your C.V.?	10:18:55	11 Q. Where is that? What are you looking at?	10:22:38
12 A. It would be the list that's on my C.V.	10:19:00	12 A. This is a binder. I'm handing you my current	10:22:50
13 Q. So if someone asked you the area or areas of	10:19:03	13 C.V.	10:23:00
14 specialization in your -- in your litigation practice,	10:19:10	14 Q. Is that a binder of original documents of	10:23:01
15 you'd give a list of eight or ten or so areas? You	10:19:14	15 yours, or is that a binder that you've copied for us?	10:23:05
16 wouldn't focus on one or two?	10:19:18	16 A. These are my originals.	10:23:09
17 A. I probably would. The nature of the	10:19:20	17 Q. Do you have an additional copy?	10:23:11
18 conversation is generally someone asks about a specific	10:19:28	18 A. No.	10:23:13
19 type of a case and asks me if I have background in that	10:19:31	19 MR. KLEVENS: We'll mark the C.V. that	10:23:25
20 area, rather than asking me to list all the areas that I	10:19:33	20 Mr. Gabrielson handed to me as Exhibit 601.	10:23:28
21 work in.	10:19:36	21 (Exhibit 601 was marked for identification.)	10:23:43
22 Q. Right. I was asking whether, as opposed to	10:19:37	22 BY MR. KLEVENS:	10:23:43
23 listing all the areas that you've ever worked in,	10:19:42	23 Q. When did you change your C.V. from the one	10:23:43
24 whether you would focus on any particular areas if	10:19:45	24 that was attached to Exhibit 600?	10:23:46
25 someone asked you, "Well, what's your main focus?"	10:19:49	25 A. In the last week.	10:23:48
	11		13

1 Q. And when was the C.V. prepared that was	10:23:51	1 Q. Well, who took your deposition?	10:27:24
2 attached as part of Exhibit 600?	10:23:55	2 A. I don't remember the guy's name. I was	10:27:26
3 A. It would have been prepared on or about the	10:23:58	3 actually questioned by six different people.	10:27:29
4 time that it was supplied to the City of San Diego.	10:24:04	4 Q. And where is that case pending?	10:27:31
5 Q. Which was when?	10:24:08	5 A. Phoenix, Arizona.	10:27:36
6 A. Approximately June of 2006.	10:24:09	6 Q. State court or federal court?	10:27:37
7 Q. So why did you change your C.V. since June of	10:24:13	7 A. State.	10:27:39
8 2006?	10:24:19	8 Q. And Abbett versus Terravita, who was your	10:27:40
9 A. I change my C.V. every time I give a	10:24:19	9 client there?	10:27:51
10 deposition testimony in a case or trial testimony in a	10:24:24	10 A. Abbett, again, I believe would be the lead	10:27:52
11 case.	10:24:26	11 homeowner. That's a related case to the Del Webb case.	10:27:55
12 Q. So what's the change between Exhibit 600 and	10:24:27	12 Q. And Wayne Wright, who did you represent in	10:28:02
13 601?	10:24:34	13 that case?	10:28:13
14 A. Three cases in which I've testified in the	10:24:35	14 A. I represented Wayne Wright.	10:28:14
15 last three weeks.	10:24:40	15 Q. And did you testify in trial or deposition or	10:28:21
16 Q. And where are those listed?	10:24:41	16 both?	10:28:26
17 A. You have the C.V. in your hand. I would say	10:24:44	17 A. Both.	10:28:26
18 the most likely place would be the bottom of Page 4.	10:24:51	18 Q. Where is that case pending, or was it pending?	10:28:27
19 Q. Looking at exhibit -- you don't have another	10:24:59	19 A. Right now as -- to the best of my knowledge,	10:28:35
20 copy of your C.V. with you?	10:25:22	20 the jury is still deliberating. And it's in Orange	10:28:41
21 A. No.	10:25:24	21 County, California.	10:28:45
22 Q. Looking at Exhibit 601, what are the cases	10:25:25	22 Q. And what was that case involving?	10:28:46
23 that you added?	10:25:31	23 A. The main issue for me was business valuation,	10:28:52
24 A. The three cases that have been added to this	10:25:32	24 and the accuracy of the books and records of the	10:28:57
25 C.V. since my C.V. was submitted in connection with my	10:25:42	25 company.	10:29:00
	14		16
1 designation are Raymond H. and Linda A. Allen, et al.,	10:25:52	1 Q. Which company?	10:29:03
2 versus Del Webb Coventry Homes, Inc., Abbett et al.,	10:25:58	2 A. Incentives Plus, Inc.	10:29:03
3 versus Terravita Corp., and Wayne Wright versus	10:26:04	3 Q. You testified adverse to Incentives regarding	10:29:04
4 Incentives Plus, Inc.	10:26:09	4 the accuracy of their books and the value of their	10:29:08
5 Q. And who was your client in Raymond Allen	10:26:14	5 business?	10:29:10
6 versus Del Webb?	10:26:18	6 A. Correct.	10:29:10
7 A. That case my client would be the homeowners of	10:26:20	7 Q. And who represented Incentive in that case?	10:29:11
8 a subdivision in Phoenix, Arizona. Actually,	10:26:31	8 A. The attorneys's name is Joe Carpello.	10:29:19
9 Scottsdale.	10:26:37	9 Q. He's in Orange County?	10:29:33
10 Q. Was it either of these -- either Allen or	10:26:37	10 A. Yes.	10:29:33
11 Webb?	10:26:41	11 Q. So the list -- the listing on your C.V.	10:29:38
12 A. I don't know these people. I think they're	10:26:42	12 regarding the areas of your concentration where it says	10:29:53
13 simply the lead plaintiffs.	10:26:44	13 areas of concentration, litigation, do you see that?	10:29:57
14 Q. And so you testified adverse to Del Webb?	10:26:45	14 A. I do.	10:30:01
15 A. Yes.	10:26:53	15 Q. Are these the areas that you're litigation	10:30:02
16 Q. And did you testify in deposition or at trial	10:26:53	16 consulting have focused on?	10:30:07
17 or both?	10:26:58	17 A. That's a list that I made several years ago.	10:30:09
18 A. Deposition.	10:26:59	18 And I haven't updated it since then.	10:30:11
19 Q. Is the case still pending?	10:26:59	19 Q. It was accurate when you made it?	10:30:13
20 A. Yes.	10:27:04	20 A. Yes.	10:30:15
21 Q. And who -- who were the attorneys representing	10:27:04	21 Q. So these are your -- if someone asked you,	10:30:15
22 Del Webb that took your deposition?	10:27:11	22 "Well, what areas do you focus on in your litigation	10:30:22
23 A. Counsel, there were probably ten attorneys in	10:27:14	23 work" this would be the list you would -- you would give	10:30:25
24 the room at the time. I don't really know which firms	10:27:21	24 them; is that right?	10:30:28
25 they were with.	10:27:23	25 A. If they needed a list, I would give them this	10:30:28
	15		17

1 list. And I would also review it to see if any other	10:30:35	1 both offices, Orange County and Salt Lake City?	10:34:18
2 areas needed to be added that I've testified in	10:30:38	2 Q. Yes.	10:34:23
3 recently.	10:30:41	3 A. I would say litigation would be less than 5	10:34:23
4 Q. And if you gave it that review, would you	10:30:41	4 percent.	10:34:33
5 change it or not?	10:30:46	5 Q. So are you the principal litigation consultant	10:34:33
6 A. I don't know. I haven't reviewed it.	10:30:46	6 in the firm?	10:34:36
7 Q. Well, look at it and tell me if you'd change	10:30:49	7 A. Yes.	10:34:37
8 it, would you, please. I'm not talking about the case	10:30:52	8 Q. And when did you become a certified public	10:34:37
9 list. I'm just talking about the list of areas of	10:31:02	9 accountant?	10:34:53
10 concentration that you put on your C.V.	10:31:05	10 A. Became a certified public accountant in the	10:34:54
11 A. Counsel, in order for me to see if this list	10:31:07	11 state of Utah in 1975, and in the state of California in	10:34:57
12 needs to be updated, I need to look at the list of	10:31:10	12 1985.	10:35:07
13 cases.	10:31:13	13 Q. And what's -- what's involved in being a	10:35:08
14 Q. So you can't tell whether your list needs to	10:31:15	14 certified valuation analyst?	10:35:17
15 be updated by just looking at it; is that right?	10:31:18	15 A. A certified valuation analyst is a -- first of	10:35:12
16 A. Not in five or ten seconds, no.	10:31:20	16 all, a CPA that's licensed in a jurisdiction. And then	10:35:18
17 Q. Have you ever been involved in a case	10:31:22	17 they are trained to do business valuation and given a	10:35:23
18 involving setting aside pension benefits?	10:31:37	18 certification by an organization called the National	10:35:28
19 A. When you say "a case," do you mean litigation?	10:31:40	19 Association of Certified Valuation Analysts in Salt Lake	10:35:30
20 Q. Yes.	10:31:46	20 City, Utah.	10:35:34
21 A. No.	10:31:49	21 Q. So are you a certified valuation analyst in	10:35:35
22 Q. Is that what this case involves?	10:31:49	22 California?	10:35:39
23 MR. CHUNG: Objection; calls for a legal	10:31:56	23 A. The designation is not specific by state.	10:35:40
24 conclusion.	10:31:59	24 It's a national designation.	10:35:43
25////	10:32:03	25 Q. And when did you become a certified valuation	10:35:45
	18		20

1 BY MR. KLEVENS:	10:32:03	1 analyst?	10:35:48
2 Q. I'm just asking for your understanding of what	10:32:03	2 A. To the best of my recollection, 1996.	10:35:48
3 the case you're working on involves. Is that what it	10:32:05	3 Q. Is there an examination associated --	10:35:51
4 involves?	10:32:07	4 associated with that?	10:35:57
5 A. In general, I believe that's one of the	10:32:08	5 A. There is.	10:35:57
6 controversies, yes.	10:32:09	6 Q. And that's given in Utah?	10:35:58
7 Q. Your -- your employment is with Haynie &	10:32:11	7 A. It's given in various locations around the	10:36:02
8 Company; is that right?	10:33:21	8 country.	10:36:06
9 A. Yes.	10:33:21	9 Q. Where did you take the examination?	10:36:07
10 Q. And you've been with them since 1971?	10:33:22	10 A. To the best of my recollection, it was	10:36:10
11 A. That's correct.	10:33:24	11 Phoenix, Arizona.	10:36:17
12 Q. And you're located in Orange County now since	10:33:25	12 Q. When was that?	10:36:18
13 1985?	10:33:29	13 A. 1996.	10:36:21
14 A. That's correct.	10:33:30	14 Q. Now, have you prepared any documents in	10:36:23
15 Q. And what does the company do?	10:33:31	15 connection with your assignment?	10:36:40
16 A. Haynie & Company is a regional CPA firm. That	10:33:35	16 A. I have.	10:36:41
17 has a full range of services, including certified	10:33:39	17 Q. What documents have you prepared?	10:36:42
18 audits, tax work, computer work, retirement plan work,	10:33:45	18 A. Well, I've prepared a binder that is -- has	10:36:44
19 business valuation, general consulting, litigation	10:33:50	19 many documents in it. Are you talking about	10:36:58
20 services.	10:33:54	20 conclusionary documents or just general range of	10:37:00
21 Q. How much of the firm's work is litigation	10:33:57	21 documents?	10:37:02
22 services?	10:34:01	22 Q. All documents that you've prepared.	10:37:03
23 A. I don't have a percentage on that.	10:34:01	23 A. Well, I believe that this binder would fit	10:37:06
24 Q. Well, do you have an estimate or not?	10:34:08	24 into that category. Not everything that's in here was	10:37:10
25 A. When you say "the firm," are you including	10:34:12	25 prepared by me.	10:37:13
	19		21

1 Q. And what do you mean by that? Was it prepared	10:37:15	1 THE WITNESS: Tab 11 is comprised of two	10:44:34
2 by others under your direction, or what?	10:37:21	2 documents. The first document is one page in length.	10:44:51
3 A. That's a possibility. Some of these documents	10:37:23	3 It was prepared by me. The second document is 15 pages	10:44:55
4 are documents in the case that have been produced.	10:37:25	4 in length. It was prepared by Joseph Esuchanko.	10:44:58
5 Q. How much have you been paid so far in this	10:37:30	5 BY MR. KLEVENS:	10:45:06
6 assignment?	10:38:51	6 Q. What's the one-page document?	10:45:07
7 A. Without reviewing the file, which you have in	10:38:51	7 A. The one-page document is a summary of	10:45:08
8 your hand, I wouldn't be able to tell you that.	10:38:56	8 mathematical amounts that attach to various factors	10:45:19
9 Q. Is every document that you have prepared in	10:38:59	9 related to, in general, MP1, MP2, the City's inadequate	10:45:26
10 that binder?	10:41:14	10 contributions to the retirement plan. Corbett, and	10:45:34
11 A. I've made notations on documents that are not	10:41:21	11 retirement benefits under MP1 or MP2 that enured to	10:45:43
12 in this binder.	10:41:26	12 certain board members of SDCERS.	10:45:50
13 Q. Aside from that, are all your other documents	10:41:29	13 MR. KLEVENS: I think what we'll do, if it's	10:45:55
14 in connection with this assignment in the binder?	10:41:42	14 possible, Mr. Leone, is we'll -- we'll copy this entire	10:45:57
15 A. No.	10:41:44	15 binder at the -- at the lunch break. Does that sound	10:46:03
16 MR. KLEVENS: Let me just hear my question.	10:41:55	16 like a possibility, or not?	10:46:07
17 (Record read.)	10:42:03	17 MR. LEONE: I don't know if we'll get the	10:46:09
18 BY MR. KLEVENS:	10:42:03	18 whole thing copied, but we can see.	10:46:11
19 Q. Aside from notations on documents that are not	10:42:04	19 MR. KLEVENS: Okay. Or maybe we'll focus on	10:46:13
20 in the binder, are there any other documents that you	10:42:08	20 particular tabs after we identify what they are.	10:46:17
21 have prepared in connection with the assignment that are	10:42:11	21 BY MR. KLEVENS:	10:46:25
22 not in your binder?	10:42:13	22 Q. I think we'll cover some other material first	10:46:26
23 A. I don't believe so. But you have several	10:42:15	23 before we go through this to give it some context.	10:46:29
24 boxes of documents behind you. And I would want to	10:42:21	24 When -- when were you retained by the City of San Diego?	10:46:32
25 review those boxes to see if there's anything in there	10:42:22	25 A. To the best of my recollection, I was	10:46:35
	22		24
1 that I prepared. I don't believe there is.	10:42:25	1 contacted in June of 2006.	10:46:41
2 Q. And your testimony is that you'd have to	10:42:26	2 Q. By whom?	10:46:45
3 review all of the binders that are in the boxes behind	10:42:39	3 A. To the best of my recollection, it was by -- I	10:46:47
4 me in order to answer that question?	10:42:45	4 was contacted by Michael Aguirre.	10:46:53
5 A. To be absolutely sure that there's no document	10:42:46	5 Q. Was that on the phone?	10:46:57
6 in there that I created, yes.	10:42:50	6 A. Yes.	10:46:58
7 Q. How many binders are there behind me?	10:42:52	7 Q. And what did that conversation consist of?	10:46:59
8 A. I would estimate 20 to 25.	10:42:55	8 A. To the best of my recollection, the	10:47:03
9 Q. Those are documents that were supplied to you	10:43:03	9 conversation was to the effect that Mr. Aguirre was	10:47:08
10 by the City of San Diego?	10:43:13	10 involved with a case in connection with his position as	10:47:12
11 A. In general, I believe that would be a fair	10:43:14	11 City Attorney. He asked me if I would testify in that	10:47:19
12 characterization.	10:43:25	12 case in areas that relate to my expertise.	10:47:24
13 Q. Have you prepared any documents that contain	10:43:27	13 Q. What areas?	10:47:27
14 opinions or conclusions?	10:43:42	14 A. At that particular time he didn't give me --	10:47:28
15 A. Yes.	10:43:44	15 give me any delineation.	10:47:37
16 Q. And which are those documents? And identify	10:43:44	16 Q. He just said in areas of your expertise?	10:47:40
17 them initially by tab number, if you would.	10:43:51	17 A. Those are my words, not his.	10:47:42
18 A. Certainly. Tab 11.	10:43:53	18 Q. Well, what's your recollection of what he	10:47:43
19 MR. CHUNG: Counsel, how do you want to	10:44:14	19 said?	10:47:45
20 identify this notebook? Tab 11 of --	10:44:16	20 A. My best recollection is that he said he had a	10:47:46
21 MR. KLEVENS: Well --	10:44:19	21 case involving the City's pension plan, in his role as a	10:47:50
22 MR. CHUNG: Just for clarity on the record.	10:44:21	22 City Attorney. And he asked me if I would be willing to	10:47:59
23 MR. KLEVENS: I guess we'll -- we'll ask the	10:44:23	23 assist with the case.	10:48:02
24 witness to identify the document.	10:44:29	24 Q. Well, did he tell you what the case involved,	10:48:04
25 What is Tab 11?	10:44:32	25 or not?	10:48:06
	23		25

1	A. He said it was the City's pension case.	10:48:09	1 and mark them as separately as exhibits, I'm open to	10:50:43
2	<b>Q. Right. Did he tell you what the case</b>	10:48:11	2 that too.	10:50:45
3	<b>involved?</b>	10:48:14	3 MR. KLEVENS: But in order to do that, we'll	10:50:45
4	A. Not in any detail, no.	10:48:14	4 have to copy the entire binder.	10:50:47
5	<b>Q. Did he tell you anything about the case?</b>	10:48:16	5 MR. CHUNG: That's fine. I'm just --	10:50:50
6	A. I don't recall a lot of specifics.	10:48:19	6 MR. KLEVENS: Which we may not be able to	10:50:51
7	<b>Q. Tell me what you do recall.</b>	10:48:24	7 accomplish here at our break.	10:50:53
8	A. I just did.	10:48:26	8 MR. CHUNG: Okay. It's up to you. I'm just	10:50:55
9	<b>Q. So you don't remember what he said? Did he</b>	10:48:27	9 saying that, you know, for clarity we are not	10:50:57
10	<b>say, for example -- did he say it was a case about</b>	10:48:31	10 identifying the notebook. And he's referring to a Tab	10:50:58
11	<b>pension benefits that were illegally enacted and needed</b>	10:48:34	11 13. And he's -- he's testified that there are 20 or 25	10:51:02
12	<b>to be set aside?</b>	10:48:40	12 notebooks that he's produced in this. And I am sure	10:51:05
13	A. I don't recall him using those words, no.	10:48:41	13 that some of those notebooks have a Tab 3 also.	10:51:08
14	<b>Q. What words do you recall his using in</b>	10:48:42	14 BY MR. KLEVENS:	10:51:08
15	<b>substance?</b>	10:48:46	15 <b>Q. There's only one notebook that contains your</b>	10:51:11
16	A. I don't recall him going into any great detail	10:48:46	16 work product, correct, except for extraneous notes here	10:51:13
17	about the case.	10:48:50	17 and there on documents produced by the City, correct?	10:51:16
18	<b>Q. And what did you say in the conversation?</b>	10:48:51	18 A. Correct.	10:51:20
19	A. I said I was open to working on the case and	10:48:56	19 <b>Q. And that notebook is the one in front of you,</b>	10:51:20
20	willing to assist.	10:49:07	20 correct?	10:51:23
21	<b>Q. Did he ask how much you charged?</b>	10:49:09	21 A. Correct.	10:51:23
22	A. No.	10:49:11	22 <b>Q. And that notebook has Tabs 1 through what?</b>	10:51:23
23	<b>Q. Did you tell him?</b>	10:49:11	23 A. It has Tabs 1 through 19. And then there are	10:51:32
24	A. No.	10:49:13	24 blank Tabs 20 through 25.	10:51:42
25	<b>Q. How long a conversation was this?</b>	10:49:14	25 <b>Q. So the only used tabs are 1 through 19?</b>	10:51:45
		26		28
1	A. I would say less than five minutes.	10:49:20	1 A. Correct.	10:51:47
2	<b>Q. And what occurred next in connection with your</b>	10:49:28	2 (Exhibit 602 was marked for identification.)	10:51:47
3	<b>assignment?</b>	10:49:30	3 BY MR. KLEVENS:	10:51:48
4	A. Later that day I was contacted by someone from	10:49:30	4 <b>Q. Well, I guess what we'll attempt to do is copy</b>	10:51:48
5	his office. I don't recall who, asking for a copy of my	10:49:38	5 the notebook and mark it as Exhibit 602.	10:51:59
6	C.V.	10:49:42	6 <b>Was your assignment in this case?</b>	10:52:21
7	<b>Q. And you supplied that?</b>	10:49:45	7 A. In general, my assignment was to become	10:52:22
8	A. I did.	10:49:46	8 familiar with the financial statements of the City,	10:52:36
9	<b>Q. And then what next occurred?</b>	10:49:46	9 financial statements of SDCERS, the activities of the	10:52:41
10	A. In order to go through the chronology,	10:49:48	10 City Council, the activities of the SDCERS board, the	10:52:45
11	Counsel, I'm going to refer to the invoices that we've	10:49:51	11 City budgets. And other documents relating to the	10:52:54
12	produced, if you don't mind.	10:49:55	12 pension controversy at issue in this case. Specifically	10:53:02
13	<b>Q. What tab is that?</b>	10:50:06	13 to become familiar with the benefits that were granted	10:53:08
14	A. That's Tab 3.	10:50:07	14 under MP1 and MP2, and to assist in evaluating the	10:53:15
15	MR. CHUNG: Actually, going back to the same	10:50:17	15 numerical impact of each of those benefits. Also to	10:53:28
16	question, we haven't identified the notebook as a whole.	10:50:18	16 look at the arrangement which the City negotiated to	10:53:32
17	So I don't know if you want to give it a description for	10:50:22	17 underfund its pension payments and the financial impact	10:53:40
18	clarity of the record. We're identifying Tab 3 in a	10:50:25	18 of that.	10:53:46
19	notebook right now.	10:50:29	19 <b>Q. And is that the assignment that you performed?</b>	10:53:59
20	MR. KLEVENS: Well, what's your suggestion? I	10:50:30	20 A. Yes. There may be other sub-assignments or	10:54:08
21	would have like to have a copy of the notebook. But you	10:50:33	21 sub-opinions related to that. But, in general, that's	10:54:19
22	haven't supplied one. So --	10:50:35	22 the big picture.	10:54:21
23	MR. CHUNG: We can mark it. If you want to	10:50:36	23 <b>Q. What benefits were granted under MP1?</b>	10:54:21
24	mark it as an exhibit, that's fine, in total. And then	10:50:38	24 A. I'm going to refer to a list which is at Tab	10:54:37
25	you can break -- if you want to break out certain parts	10:50:40	25 11. MP1 had a benefit related to what I'm calling a	10:54:46
		27		29



1 service retirement factor. Had a benefit --	10:54:54	1 enhancements were approved by the City Council.	10:58:04
2 <b>Q. What does that mean?</b>	10:54:57	2 <b>Q. So what's the answer to my question? Were</b>	10:58:06
3 <b>A. It has to do with the factor that's multiplied</b>	10:54:59	3 <b>retirement benefits approved by the Retirement Board?</b>	10:58:09
4 times the year -- years of service that a -- an employee	10:55:03	4 <b>MR. CHUNG: Same objection.</b>	10:58:11
5 has. In other words, the factors were changed.	10:55:06	5 <b>THE WITNESS: I believe I answered your</b>	10:58:14
6 Further, there was a benefit which I'm characterizing as	10:55:12	6 question to the best of my knowledge, no.	10:58:18
7 the 20 percent disability offset. There was also a	10:55:16	7 <b>BY MR. KLEVENS:</b>	10:58:17
8 disability factor increase. There was a benefit which	10:55:19	8 <b>Q. And retirement benefits changes that you</b>	10:58:26
9 I'm categorizing or characterizing as purchase of	10:55:26	9 <b>listed a few moments ago from Tab 11, those retirement</b>	10:58:33
10 service credits. There was a benefit known as DROP,	10:55:29	10 <b>benefits were approved by the City Council, correct?</b>	10:58:38
11 Deferred Retirement Option Program, option plan. And	10:55:34	11 <b>A. Yes.</b>	10:58:41
12 another benefit which was changed, which is known as the	10:55:38	12 <b>MR. CHUNG: Objection; calls for a legal</b>	10:58:41
13 13th Check.	10:55:41	13 <b>conclusion.</b>	10:58:44
14 <b>Q. Is that all the benefits that you say were</b>	10:55:44	14 <b>BY MR. KLEVENS:</b>	10:58:44
15 <b>granted under MP1?</b>	10:55:47	15 <b>Q. Is that correct?</b>	10:58:49
16 <b>A. Those are the ones that I have singled out and</b>	10:55:48	16 <b>A. To the best of my knowledge, they were, yes.</b>	10:58:49
17 <b>highlighted in my opinion.</b>	10:55:52	17 <b>Q. That's based on your review of these various</b>	10:58:47
18 <b>Q. And. And why did you single those out?</b>	10:55:53	18 <b>documents; isn't that right?</b>	10:58:49
19 <b>A. Because they were benefits under MP1.</b>	10:55:56	19 <b>A. True.</b>	10:58:50
20 <b>Q. Is this something you were told or something</b>	10:56:01	20 <b>Q. Were the retirement benefit changes negotiated</b>	10:58:50
21 <b>you determined?</b>	10:56:03	21 <b>between the City and the various public employee labor</b>	10:59:13
22 <b>A. It's something I determined.</b>	10:56:03	22 <b>organizations representing the different categories of</b>	10:59:16
23 <b>Q. How did you determine that these were benefits</b>	10:56:07	23 <b>public employees employed in the City of San Diego?</b>	10:59:20
24 <b>granted under MP1?</b>	10:56:11	24 <b>A. In general, yes.</b>	10:59:22
25 <b>A. By reading City Council minutes, SDCERS</b>	10:56:13	25 <b>Q. Was the Retirement Board involved in those</b>	10:59:29
	30		32
1 minutes and other documents that were supplied to me in	10:56:17	1 <b>negotiations in any way, to your knowledge?</b>	10:59:33
2 the case.	10:56:20	2 <b>A. As I stated earlier, I believe the retirement</b>	10:59:35
3 <b>Q. And what are you referring to as MP1?</b>	10:56:21	3 <b>enhancements were proposed as a package. And there were</b>	10:59:43
4 <b>A. MP1 is the change in the pension arrangements</b>	10:56:25	4 <b>three different parties involved in those discussions,</b>	10:59:48
5 <b>that occurred in 1996.</b>	10:56:34	5 <b>the City, the SDCERS board, and the unions.</b>	10:59:52
6 <b>Q. MP1 stands for Manager's Proposal 1, does it</b>	10:56:40	6 <b>Q. Could you answer my question, please. Did the</b>	10:59:56
7 <b>not?</b>	10:56:45	7 <b>Retirement Board participate in any way in the</b>	10:59:59
8 <b>A. Correct.</b>	10:56:45	8 <b>negotiations between the City and the labor unions?</b>	11:00:01
9 <b>Q. And was that a proposal from the City to</b>	10:56:46	9 <b>A. By that, do you mean did the Retirement Board</b>	11:00:09
10 <b>SDCERS to provide contribution relief to the City of San</b>	10:56:51	10 <b>sit in on the negotiations?</b>	11:00:11
11 <b>Diego?</b>	10:57:02	11 <b>Q. Start with that.</b>	11:00:13
12 <b>A. That was part of it.</b>	10:57:02	12 <b>A. To the best of my knowledge, they didn't sit</b>	11:00:14
13 <b>Q. And MP1 was approved by the SDCERS Retirement</b>	10:57:03	13 <b>in on the negotiations.</b>	11:00:17
14 <b>Board, was it not?</b>	10:57:29	14 <b>Q. Did the Retirement Board have any role in the</b>	11:00:18
15 <b>A. Yes.</b>	10:57:30	15 <b>negotiations that you're aware of?</b>	11:00:32
16 <b>Q. Were retirement benefits approved by the</b>	10:57:30	16 <b>A. In general, as I stated before, all of the</b>	11:00:33
17 <b>SDCERS Retirement Board?</b>	10:57:34	17 <b>changes, including the reduction in contributions by the</b>	11:00:41
18 <b>MR. CHUNG: Objection; calls for a legal</b>	10:57:41	18 <b>City, which the SDCERS -- SDCERS board had to approve, I</b>	11:00:44
19 <b>conclusion.</b>	10:57:42	19 <b>believe the unions had to approve that also, was done as</b>	11:00:52
20 <b>BY MR. KLEVENS:</b>	10:57:44	20 <b>a package. To the best of my recollection, all the</b>	11:00:54
21 <b>Q. You can answer.</b>	10:57:45	21 <b>parties understood that if all the changes were not</b>	11:01:02
22 <b>A. I don't believe that the SDCERS Retirement</b>	10:57:46	22 <b>approved by everybody, that there would be no changes.</b>	11:01:09
23 <b>Board specifically approved the benefits. But the</b>	10:57:50	23 <b>Q. Right. So what did the Retirement Board do</b>	11:01:12
24 <b>changes in the pension arrangement were proposed as a</b>	10:57:55	24 <b>anything in negotiations between the City and the labor</b>	11:01:20
25 <b>package. And as part of that package benefit</b>	10:57:59	25 <b>unions?</b>	11:01:29
	31		33

1 A. I'd have to review the documents in my file to	11:01:25	1 benefits were, as you said, granted under MP2?	11:04:29
2 be more specific than I've been up to this point.	11:01:29	2 A. By reading the documents in the case.	11:04:39
3 Q. Well, as you sit here now, what -- what can	11:01:32	3 Q. Did anybody tell you what retirement benefits	11:04:48
4 you tell me that the Retirement Board did, if anything,	11:01:34	4 were granted under MP2?	11:04:48
5 in connection with negotiations between the City and its	11:01:39	5 A. I don't recall if they did or not.	11:04:48
6 labor unions in 1996?	11:01:42	6 Q. So from looking at the documents, which are	11:04:50
7 MR. CHUNG: Objection; this question is	11:01:46	7 included in these 25 binders behind me, you determined	11:04:56
8 outside the scope of Mr. Gabrielson's designation. But	11:01:48	8 that the change in retirement benefits or -- strike	11:05:00
9 to the extent he knows, you can answer.	11:01:54	9 that.	11:05:00
10 BY MR. KLEVENS:	11:01:56	10 You determined that the retirement benefits	11:05:05
11 Q. You can answer, sir. What, if anything, did	11:01:57	11 that were granted under MP2 concerned changing the	11:05:06
12 they do, the Retirement Board, in connection with those	11:01:59	12 retirement factor for general and safety members; is	11:05:11
13 negotiations?	11:02:03	13 that right?	11:05:11
14 A. I'm not aware of specifically what the	11:02:04	14 THE WITNESS: Can I have that question read	11:05:15
15 Retirement Board did in connection with the	11:02:08	15 back, please.	11:05:17
16 negotiations, if anything.	11:02:10	16 MR. KLEVENS: Sure.	11:05:17
17 Q. Did anybody from the City tell you that the	11:02:12	17 (Record read.)	11:05:17
18 Retirement Board did anything in those negotiations?	11:02:35	18 THE WITNESS: Yes. As I said, on MP2 I'm	11:05:37
19 A. Not that I recall.	11:02:37	19 going by recollection. I would need to review documents	11:05:45
20 Q. Now, you said there were benefits granted	11:02:38	20 to be specific on that.	11:05:48
21 under MP2 as well; is that right?	11:02:58	21 BY MR. KLEVENS:	11:05:50
22 A. Yes.	11:03:00	22 Q. But that's the only benefits that you	11:05:50
23 Q. What retirement benefits do you say were	11:03:00	23 identified at Tab 11; is that right?	11:05:58
24 granted under MP2?	11:03:04	24 A. Under MP2?	11:05:59
25 A. The service retirement factor was changed	11:03:05	25 Q. Yes.	11:06:00
	34		36
1 again.	11:03:07	1 A. Yes.	11:06:01
2 Q. Is that for all employees or just some?	11:03:09	2 Q. And how did you determine that benefits were	11:06:01
3 A. Off the top of my head, I don't exactly	11:03:12	3 granted under MP2 at all?	11:06:04
4 recall. I'd have to review documents.	11:03:15	4 A. By reading the documents in the case.	11:06:06
5 Q. What documents would you have to review?	11:03:17	5 Q. MP2 refers to Manager's Proposal 2; is that	11:06:09
6 A. The documents in this binder and the documents	11:03:18	6 correct?	11:06:23
7 behind you in the boxes.	11:03:25	7 A. Yes.	11:06:23
8 Q. In 1996, when the service retirement factor	11:03:27	8 Q. That was a proposal from the City to the	11:06:24
9 was changed, for which employees, do you recall?	11:03:32	9 SDCERS board to provide contribution relief; is that	11:06:27
10 A. Off the top of my head, no. I believe there	11:03:36	10 right?	11:06:32
11 was -- there was a change in the general and there was a	11:03:39	11 A. Yes.	11:06:32
12 change in the safety.	11:03:43	12 Q. And what makes you say that retirement	11:06:33
13 Q. In '96?	11:03:44	13 benefits were involved?	11:06:43
14 A. Yes.	11:03:46	14 A. Review of the documents in the case.	11:06:43
15 Q. What about in 2002?	11:03:46	15 Q. Specifically what do you recall that made you	11:06:47
16 A. As best I recall, same.	11:03:48	16 believe that retirement benefits were, as you said,	11:06:52
17 Q. Change in the safety factors as well, that's	11:03:52	17 granted under MP2?	11:06:55
18 your recollection?	11:03:55	18 A. City Council minutes, meet and confer	11:06:56
19 A. As best I recall.	11:03:56	19 documents, and SDCERS minutes, among other things.	11:07:01
20 Q. Any other retirement benefit changes in 2002?	11:03:57	20 Q. In your review did you determine that	11:07:04
21 A. No.	11:04:09	21 initially the City had proposed reducing the trigger for	11:07:22
22 Q. So the only one you looked at was the	11:04:09	22 increased funding from 82.3 percent to 75 percent?	11:07:33
23 retirement factor change?	11:04:14	23 A. I don't believe that's accurate.	11:07:40
24 A. Correct.	11:04:15	24 Q. You didn't determine that the City had	11:07:43
25 Q. And how did you determine what retirement	11:04:16	25 proposed that?	11:07:46
	35		37

1 A. You said they proposed that in the trigger in	11:07:46	1 that proposal to reduce the trigger to 75 percent.	11:20:55
2 return for increased funding. What do you mean by	11:07:53	2 Q. That was on July 11th, 2002, correct?	11:21:00
3 increased funding?	11:07:56	3 A. To the best of my recollection, yes.	11:21:06
4 Q. No, that's not what I said. I said that in --	11:07:57	4 Q. And the Saathoff motion proposed that the	11:21:07
5 did you understand that MP1 involved, among other	11:08:00	5 trigger would remain at 82.3 percent, but that the City	11:21:18
6 things, a requirement that when the funding level	11:08:04	6 would have five years to bring their contributions up to	11:21:23
7 dropped below 82.3 percent, the City would have to	11:08:07	7 the necessary level; is that right?	11:21:29
8 increase its contributions to bring the funding level	11:08:11	8 MR. CHUNG: Objection; document speaks for	11:21:31
9 back up?	11:08:14	9 itself.	11:21:32
10 A. Yes.	11:08:15	10 BY MR. KLEVENS:	11:21:32
11 Q. And that was under MP1, correct?	11:08:15	11 Q. Is that your understanding?	11:21:33
12 A. Correct.	11:08:16	12 A. In general, that would be my understanding,	11:21:34
13 Q. And in connection with MP2, the City proposed	11:08:18	13 yes.	11:21:36
14 reducing that trigger point from 82.3 percent to 75	11:08:23	14 Q. And did the Retirement Board indicate that	11:21:36
15 percent; is that right?	11:08:26	15 their approval of that five-year proposal -- we'll just	11:21:50
16 A. I believe that was the initial proposal, yes.	11:08:27	16 use that as a shorthand -- that their approval of the	11:21:58
17 Q. What happened to that proposal?	11:08:30	17 five-year proposal was subject to certain conditions?	11:22:01
18 A. It went through many changes. And the final	11:08:35	18 MR. CHUNG: Objection; to the extent that's	11:22:05
19 version did not have the 75 percent provision.	11:08:44	19 referring to a document, document speaks for itself.	11:22:07
20 Q. The Retirement Board rejected the proposal to	11:08:47	20 BY MR. KLEVENS:	11:22:10
21 reduce the trigger from 82.3 percent to 75 percent; is	11:08:50	21 Q. Is that your understanding?	11:22:11
22 that correct?	11:08:54	22 A. To the best of my recollection, yes.	11:22:11
23 A. In general, yes.	11:08:54	23 Q. And what do you recall those conditions were?	11:22:14
24 MR. CHUNG: Counsel we've been going	11:09:04	24 A. I recall a statement in one of the minutes.	11:22:15
25 60 minutes. Do you mind if we take a five-minute break?	11:09:05	25 It could have been the same meeting that you just	11:22:21
	38		40
1 MR. KLEVENS: No.	11:09:08	1 referred to, which I believe was July 11th. Something	11:22:23
2 THE VIDEOGRAPHER: We are off the record. The	11:09:10	2 to the effect that a satisfactory agreement had to be	11:22:27
3 time is 11:08 a.m.	11:09:12	3 worked out with the City.	11:22:29
4 (Recess taken.)	11:18:59	4 Q. Agreement between the Board and the City?	11:22:31
5 THE VIDEOGRAPHER: We are back on the record.	11:19:04	5 A. Yes.	11:22:33
6 The time is 11:18 a.m.	11:19:06	6 Q. In writing?	11:22:34
7 BY MR. KLEVENS:	11:19:09	7 A. Correct.	11:22:35
8 Q. Mr. Gabrielson, we were talking about MP2 when	11:19:29	8 Q. And did the Board also specify that the	11:22:36
9 we broke. Do you recall?	11:19:32	9 proposal, in order to be approved, would have to be	11:22:44
10 A. Yes.	11:19:32	10 acceptable to the Board's actuary?	11:22:50
11 Q. I believe when we broke, you told me that the	11:19:33	11 MR. CHUNG: Objection; document speaks for	11:22:53
12 Retirement Board rejected the proposal to reduce the	11:19:51	12 itself.	11:22:55
13 trigger point from 82.3 percent to 75 percent, correct?	11:19:54	13 THE WITNESS: To the best of my recollection,	11:23:00
14 A. Yes.	11:19:56	14 I believe that's accurate.	11:23:02
15 Q. And the City had taken the position initially	11:19:59	15 BY MR. KLEVENS:	11:23:03
16 that certain benefits would be contingent on reducing	11:20:02	16 Q. And did the Board indicate also that the	11:23:04
17 that trigger point, correct?	11:20:06	17 agreement would have to be acceptable to the Board's	11:23:08
18 A. Yes.	11:20:09	18 outside fiduciary counsel?	11:23:14
19 Q. And when did the retirement board reject the	11:20:09	19 MR. CHUNG: Objection; document speaks for	11:23:17
20 proposal to reduce the trigger point from 82.3 percent	11:20:35	20 itself.	11:23:18
21 to 75 percent?	11:20:39	21 THE WITNESS: To the best of my recollection,	11:23:19
22 A. I don't recall a specific date. I recall	11:20:39	22 that's accurate.	11:23:20
23 reading the minutes of that particular meeting. I	11:20:43	23 BY MR. KLEVENS:	11:23:21
24 recall a motion that was made by Mr. Saathoff. I	11:20:46	24 Q. Were there any other conditions that you	11:23:21
25 believe that was the -- in essence, the rejection of	11:20:51	25 recall, aside from those three that I listed?	11:23:22
	39		41

1 A. Not that I recall, as I sit here at the	11:23:27	1 They were documents produced in this case.	11:26:27
2 moment.	11:23:29	2 Q. And who decided what documents you should	11:26:29
3 Q. And then was there an agreement negotiated	11:23:29	3 review?	11:26:32
4 between the City and the Retirement Board?	11:23:39	4 A. I was given a binder, which I believe is --	11:26:37
5 A. There was.	11:23:42	5 has been designated Exhibit 405. But I asked for other	11:26:43
6 Q. And who negotiated for the Retirement Board?	11:23:43	6 documents beyond that.	11:26:49
7 A. You want the name of the specific person?	11:23:47	7 Q. Were you given all the documents you asked	11:26:51
8 Q. Yes, if you know.	11:23:54	8 for?	11:27:01
9 A. I don't specifically recall.	11:23:55	9 A. Yes.	11:27:01
10 Q. Well, do you recall capacity of the person who	11:23:57	10 Q. Is there a list of the documents you asked for	11:27:02
11 negotiated for the Retirement Board?	11:24:01	11 or a series of letters where you asked for documents?	11:27:06
12 A. Not specifically, no.	11:24:02	12 A. There's a list of documents attached to one of	11:27:08
13 Q. Was it their fiduciary counsel, Mr. Blum?	11:24:05	13 our bills, which would be the documents that we had	11:27:18
14 A. I recall that he had a role, yes.	11:24:11	14 received to that point. But that wouldn't be a complete	11:27:20
15 Q. Did anybody else from the Retirement Board	11:24:14	15 list.	11:27:25
16 have a role in conducting the negotiations with the	11:24:17	16 Q. Is there such a list?	11:27:25
17 City?	11:24:19	17 A. Not all in one place, no.	11:27:30
18 A. I don't know.	11:24:20	18 Q. Well, are there -- are the requests that you	11:27:33
19 Q. Who negotiated on the City's behalf?	11:24:21	19 made for documents in writing?	11:27:38
20 A. As best I recall, it was the City manager.	11:24:31	20 A. I don't recall that they would be. They're	11:27:47
21 Q. Who was that?	11:24:37	21 probably verbal.	11:27:48
22 A. Mr. Uberuaga, as I recall.	11:24:38	22 Q. Who did you make your requests to?	11:27:49
23 Q. Did you review any documents in connection	11:24:43	23 A. My requests for documents were made primarily	11:27:53
24 with that negotiation?	11:24:49	24 to Christine Fitzgerald and Walter Chung.	11:27:57
25 A. Yes.	11:24:51	25 Q. Now, the three conditions that you mentioned	11:28:04
	42		44
1 Q. What documents? By category, I'm not asking	11:24:54	1 from the July 11th, '02 SDCERS meeting, were those three	11:28:14
2 you a specific.	11:24:59	2 conditions satisfied?	11:28:26
3 A. I believe they were meet and confer documents	11:25:01	3 A. To the best of my recollection, they were.	11:28:26
4 that -- that dealt with the unions. And they were -- I	11:25:05	4 Q. And when did that occur?	11:28:29
5 recall seeing e-mails back and forth regarding the	11:25:09	5 A. It -- it occurred over time. As I best	11:28:31
6 negotiations.	11:25:15	6 recall, it took several weeks at a minimum to have	11:28:38
7 Q. I'm talking specifically about negotiations of	11:25:15	7 everything come together.	11:28:41
8 the agreement between the Retirement Board and the City.	11:25:20	8 Q. Wouldn't it be more accurate to say several	11:28:43
9 Are you saying that the labor unions were involved in	11:25:27	9 months?	11:28:52
10 those negotiations?	11:25:29	10 A. I was going to say weeks to months. I recall	11:28:53
11 A. No.	11:25:30	11 I think it took at least two months for a new opinion	11:28:56
12 Q. Okay. So I was asking if you saw documents	11:25:30	12 letter to come out from Mr. Blum. So, yes, I would say	11:29:02
13 concerning the negotiations between the Retirement Board	11:25:35	13 months is more accurate.	11:29:06
14 and the City to reach this written agreement that had	11:25:37	14 Q. And the Retirement Board ultimately approved	11:29:07
15 been specified as a condition on July 11th. Did you see	11:25:40	15 the five-year period to adjust contributions upward if	11:29:15
16 documents concerning those negotiations?	11:25:43	16 the 82.3 percent trigger was reached, Retirement Board	11:29:37
17 A. Yes. The City made presentations to the	11:25:45	17 ultimately approved that in the middle of November 2002,	11:29:43
18 SDCERS board, as I recall.	11:25:56	18 correct?	11:29:47
19 Q. And did you see e-mails from Mr. Blum?	11:25:58	19 MR. CHUNG: Objection; compound, vague and	11:29:47
20 A. I recall seeing at least one.	11:26:03	20 ambiguous.	11:29:49
21 Q. Are the -- strike that.	11:26:05	21 THE WITNESS: To the best of my recollection,	11:29:51
22 The documents that you did review in	11:26:10	22 yes.	11:29:52
23 connection with this case, those were all supplied by	11:26:13	23 BY MR. KLEVENS:	11:29:58
24 the City; is that correct?	11:26:15	24 Q. Now, by that time, mid November, 2002, had the	11:29:58
25 A. Well, they came to me by way of the City, yes.	11:26:16	25 enhancement of the retirement factor that you said	11:30:07
	43		45

1 occurred in 2002, had that already been approved?	11:30:11	1 you can. My question was, to your knowledge, did the --	11:33:04
2 A. Without redoing -- reviewing documents, I	11:30:15	2 did any of the Memoranda of Understanding with the labor	11:33:10
3 don't recall.	11:30:27	3 unions that contained the enhanced retirement factor	11:33:13
4 Q. What documents would you have to review?	11:30:27	4 also contain a contingency saying that the MOU wouldn't	11:33:18
5 A. City Council documents.	11:30:30	5 be binding unless and until the Retirement Board	11:33:29
6 Q. Is it correct, based on your review of	11:30:32	6 approved MP2?	11:33:30
7 documents, that by mid November 2002 the retirement	11:30:47	7 A. I don't --	11:33:32
8 factor was already put into effect? The enhanced	11:30:51	8 MR. CHUNG: Same objections.	11:33:33
9 retirement factor was already put into effect by the	11:30:56	9 BY MR. KLEVENS:	11:33:39
10 City; isn't that correct?	11:30:59	10 Q. Go ahead.	11:33:39
11 A. I don't recall specifically.	11:31:00	11 A. I don't specifically recall.	11:33:36
12 Q. You don't recall that?	11:31:02	12 Q. Well, as you sit here, do you recall any such	11:33:37
13 A. I don't recall that it was in -- when you say	11:31:03	13 contingency in any of those MOU's?	11:33:41
14 in effect, do you mean approved as of that time?	11:31:06	14 A. As I sit here at the moment, I don't.	11:33:44
15 Q. I mean both approved and put into effect.	11:31:10	15 Q. Anybody ever tell you there was a contingency	11:33:46
16 Actually, effectuated.	11:31:13	16 in the MOU's of that kind?	11:33:48
17 A. I don't recall.	11:31:15	17 A. I don't recall anyone telling me that.	11:33:50
18 Q. The enhancement retirement factor was	11:31:15	18 Q. And did the City Council actually enact an	11:33:52
19 something negotiated between the City and the labor	11:31:28	19 ordinance putting the enhanced retirement factors into	11:33:59
20 organizations, correct?	11:31:32	20 effect?	11:34:09
21 A. Yes.	11:31:34	21 A. Yes.	11:34:09
22 Q. This was in 2002?	11:31:34	22 Q. And that ordinance was enacted before	11:34:07
23 A. Correct.	11:31:37	23 November 15th, 2002, was it not?	11:34:14
24 Q. And then that enhanced retirement factor was	11:31:37	24 MR. CHUNG: Objection; asked and answered.	11:34:16
25 put in Memoranda of Understanding between the City and	11:31:40	25 THE WITNESS: My best recollection on the date	11:34:27
	46		48
1 the labor unions, correct?	11:31:43	1 of the ordinance is November 18th.	11:34:29
2 A. Yes.	11:31:44	2 BY MR. KLEVENS:	11:34:28
3 Q. And when were those Memoranda of Understanding	11:31:46	3 Q. Did the City enact a resolution effectuating	11:34:41
4 approved by the City?	11:31:50	4 the Memoranda of Understanding?	11:34:46
5 A. I don't recall the specific dates.	11:31:51	5 MR. CHUNG: Objection; vague and ambiguous.	11:34:50
6 Q. Well, do you recall it was before mid	11:32:04	6 THE WITNESS: I believe so.	11:34:53
7 November 2002 that the City approved the Memoranda of	11:32:07	7 BY MR. KLEVENS:	11:34:54
8 Understanding with the unions that included these	11:32:11	8 Q. And when was that?	11:34:56
9 enhanced retirement factors?	11:32:14	9 A. I don't remember the specific date.	11:34:56
10 A. That's my best recollection, yes.	11:32:19	10 Q. It was before November 18th, was it not?	11:34:59
11 Q. And what -- and is -- do you have any	11:32:16	11 A. I believe it was.	11:35:03
12 understanding as to whether those Memoranda of	11:32:19	12 Q. Before November 15th, wasn't it?	11:35:03
13 Understanding contained any contingency related to	11:32:22	13 A. That's my best recollection.	11:35:05
14 approval by the SDCERS board of the five-year	11:32:27	14 Q. And what's your best recollection of when it	11:35:07
15 modification?	11:32:31	15 was? October 21st, 2002?	11:35:11
16 MR. CHUNG: Objection; document speaks for	11:32:34	16 A. That sounds correct.	11:35:14
17 itself. Calls for a legal conclusion.	11:32:35	17 Q. Why do you say that there were benefits	11:35:16
18 THE WITNESS: As best I recall, the	11:32:41	18 granted under MP2?	11:35:50
19 Memorandums of Understanding were not totally -- they	11:32:43	19 A. From reviewing the documents in the case.	11:35:51
20 were not consistent with each other. And they were not	11:32:47	20 Q. Is there anything in the chronology of events	11:36:00
21 necessarily up to date with the state of the	11:32:49	21 that we just went through that makes you say that	11:36:25
22 negotiations at the time that they were each put into	11:32:56	22 benefits were granted under MP2?	11:36:29
23 effect.	11:33:01	23 A. Anything in the chronology that makes me think	11:36:31
24 BY MR. KLEVENS:	11:33:01	24 benefits were granted?	11:36:37
25 Q. Could you just try to answer my question if	11:33:02	25 Q. Yes. In the chronology we just reviewed	11:36:38
	47		49

1 regarding the benefits and the -- and the five-year	11:36:40	1 A. Certainly.	11:39:45
2 plan.	11:36:47	2 Q. And was that benefit when -- when it was	11:39:45
3 A. Well, my best recollection of MP2 is that	11:36:48	3 adopted, limited to incumbent presidents?	11:39:48
4 there was a presidential leave benefit. There was	11:36:53	4 A. I don't specifically recall how it was limited	11:39:53
5 enhancements for the general members, and that was all	11:36:59	5 the first time around. As I said earlier, my best	11:40:04
6 part of a package that had to do with the negotiations	11:37:02	6 recollection is that it came up in two different places.	11:40:08
7 with the Board to ultimately have the five-year phase-in	11:37:09	7 And I believe it was broadened later from what it was	11:40:10
8 that you've been referring to.	11:37:13	8 originally.	11:40:15
9 Q. You just mentioned presidential leave.	11:37:16	9 Q. What's the answer to my question? Was it	11:40:15
10 Earlier when we talked about benefits you didn't mention	11:37:18	10 limited to incumbent union presidents, or not?	11:40:18
11 that, did you?	11:37:20	11 A. I don't recall.	11:40:20
12 A. I didn't.	11:37:21	12 Q. And was there also an issue of presidential	11:40:21
13 Q. And when did you recall that?	11:37:21	13 leave that was separate and apart from whether union	11:40:31
14 A. Recall it as I sat here. It's on my list.	11:37:23	14 presidents could combine City salary and union salary in	11:40:36
15 Q. Is it on Exhibit 11?	11:37:29	15 calculating retirement benefits?	11:40:39
16 A. Yes.	11:37:30	16 A. I'm not sure I totally understand the	11:40:41
17 Q. Could you turn to that, please.	11:37:30	17 question.	11:40:49
18 MR. CHUNG: Tab 11, not Exhibit 11.	11:37:32	18 Q. Was there another issue in connection with	11:40:49
19 MR. KLEVENS: I'm sorry. Tab 11.	11:37:34	19 negotiations between the City and the unions in 2002	11:40:53
20 THE WITNESS: It's under individual board	11:37:42	20 that concerned presidential leave, separate and apart	11:40:58
21 members.	11:37:44	21 from this question of how a president's retirement	11:41:02
22 BY MR. KLEVENS:	11:37:44	22 benefit would be calculated?	11:41:07
23 Q. There's nothing on there that says	11:37:44	23 A. I don't recall.	11:41:08
24 presidential leave, correct?	11:37:45	24 Q. Do you recall whether there was discussion in	11:41:13
25 A. Not on that specific page.	11:37:46	25 2002 between the unions and the City pertaining, not to	11:41:20
	50		52
1 Q. And under MP2, the only benefit listed is	11:37:48	1 incumbent union presidents, but ongoing union presidents	11:41:26
2 service retirement factor; is that correct?	11:37:51	2 and whether they would have the right to have leave from	11:41:30
3 A. That's the only one that's listed on this	11:37:53	3 their City employment in order to serve as union	11:41:34
4 page.	11:37:55	4 presidents?	11:41:38
5 Q. And -- and why is that?	11:37:55	5 A. I believe that's correct.	11:41:39
6 A. Because that's the only one that was analyzed.	11:37:58	6 Q. And that was separate from the issue of how	11:41:40
7 Other than an analysis of the presidential leave and the	11:38:06	7 retirement calculation was done; isn't that correct?	11:41:42
8 benefits that would accrue to the six people that were	11:38:11	8 A. As you just stated, I believe it would be,	11:41:45
9 on the board.	11:38:15	9 yes.	11:41:47
10 Q. And what is the basis for your -- the	11:38:16	10 Q. And wasn't that matter referred to as	11:41:48
11 statement you made a moment ago that presidential leave	11:38:27	11 presidential leave?	11:41:50
12 was part of MP2?	11:38:30	12 A. I believe so.	11:41:52
13 A. Documents that relate to the time period when	11:38:32	13 Q. And that was negotiated between the unions and	11:41:55
14 that particular -- actually, there's more than one place	11:38:44	14 the City in 2002, correct?	11:41:58
15 where presidential leave comes in. As I recall, in	11:38:51	15 A. Yes.	11:42:00
16 early May there was a -- a document relating to that.	11:38:55	16 Q. Now, were you given documents by the City that	11:42:01
17 But then there was additional documentation several	11:39:00	17 pertained to the history of this question of how	11:42:07
18 months up to and include several months later on that.	11:39:05	18 retirement benefits would be calculated for union	11:42:11
19 Q. And by presidential leave, you mean what?	11:39:08	19 presidents?	11:42:15
20 A. I mean a situation where a union president	11:39:11	20 A. I'm not sure I totally follow the question.	11:42:16
21 would be able to combine their union salary and their	11:39:16	21 Q. Well, this matter of how retirement benefits	11:42:29
22 City salary in term of work together to calculate their	11:39:20	22 would be calculated for union presidents, that didn't	11:42:30
23 pension benefit.	11:39:25	23 arise for the first time in 2002, did it?	11:42:33
24 Q. And can we refer to that as the incumbent	11:39:26	24 A. I don't believe so.	11:42:35
25 president benefit? And you'll know what I mean?	11:39:41	25 Q. When did it arise?	11:42:36
	51		53

1	A. I don't recall.	11:42:37	1 leave and retirement benefits, Issue Number 2, current	11:47:25
2	<b>Q. Sometime prior to 2002; isn't that right?</b>	11:42:38	2 local president -- Local 145 president, which I	11:47:28
3	A. I believe so.	11:42:41	3 understand to be at that time Ron Saathoff. And at the	11:47:31
4	<b>Q. Prior to discussion of MP2?</b>	11:42:42	4 bottom of that page, on Slide Number 40, Issue Number 1,	11:47:36
5	A. Likely, yes.	11:42:45	5 says, "Authorized full-time City paid union presidential	11:47:40
6	<b>Q. Were you -- did you review documents that</b>	11:42:49	6 leave for each of the four unions beginning July 1,	11:47:44
7	<b>indicated that for some years prior to 2002 presidents</b>	11:43:00	7 2002." That's the main document that I recall in answer	11:47:47
8	<b>of the Police Union and the Municipal Employees Union</b>	11:43:11	8 to your question.	11:47:51
9	<b>were allowed to calculate their retirement benefits</b>	11:43:19	9 <b>Q. Now, looking at the documents you've</b>	11:47:52
10	<b>based on their union salary?</b>	11:43:23	10 identified from Exhibit 405, Page 3 indicates that the	11:49:33
11	A. I do recall something to that effect, yes.	11:43:25	11 presidents of MEA and POA already had the benefit,	11:49:41
12	<b>Q. And do you recall learning that that was --</b>	11:43:30	12 correct?	11:49:49
13	<b>had been approved without the benefit of an ordinance or</b>	11:43:58	13 MR. CHUNG: Documents speaks for itself.	11:49:53
14	<b>a resolution?</b>	11:44:01	14 BY MR. KLEVENS:	11:49:53
15	A. I don't recall that.	11:44:03	15 <b>Q. That was your understanding from reviewing the</b>	11:49:55
16	<b>Q. Do you recall that -- that there was no fixed</b>	11:44:04	16 document, correct?	11:49:59
17	<b>limit on what that union salary could be?</b>	11:44:16	17 A. That would be my best interpretation of the	11:49:59
18	A. I don't recall.	11:44:20	18 document as I sit here at the moment, yes.	11:50:09
19	<b>Q. And do you recall that the president of the</b>	11:44:21	19 <b>Q. The document indicated that they were</b>	11:50:11
20	<b>Firefighters Union then in -- in or about 2001 requested</b>	11:44:31	20 expecting their retirement calculation to be based on	11:50:13
21	<b>that the Firefighters Union have the same benefit as the</b>	11:44:43	21 their union salary, correct?	11:50:20
22	<b>Municipal Employees Union and the Police Union?</b>	11:44:48	22 MR. CHUNG: Document speaks for itself.	11:50:22
23	A. I don't recall that.	11:44:50	23 BY MR. KLEVENS:	11:50:24
24	<b>Q. You weren't given any documents that reflected</b>	11:44:50	24 <b>Q. Correct?</b>	11:50:24
25	<b>that?</b>	11:44:53	25 A. Yes.	11:50:25
		54		56

1	A. Not that I recall.	11:44:53	1 <b>Q. And it indicated the amount of their union</b>	11:50:36
2	<b>Q. Well, what is your -- what information did you</b>	11:44:54	2 salary, correct?	11:50:40
3	<b>review indicating how the incumbent president benefit --</b>	11:45:13	3 MR. CHUNG: Document speaks for itself.	11:50:41
4	<b>namely this issue of being able to use union salary in</b>	11:45:22	4 THE WITNESS: Yes.	11:50:42
5	<b>calculating retirement benefit, are you with me?</b>	11:45:29	5 BY MR. KLEVENS:	11:50:43
6	A. Yes.	11:45:32	6 <b>Q. And there was no cap, correct?</b>	11:50:45
7	<b>Q. For union presidents. How did that matter</b>	11:45:32	7 MR. CHUNG: Document speaks for itself.	11:50:48
8	<b>come up in 2002?</b>	11:45:35	8 THE WITNESS: I don't see any cap mentioned on	11:50:49
9	A. To the best I recall, it came up in meet and	11:45:36	9 this document.	11:50:57
10	confer.	11:45:39	10 BY MR. KLEVENS:	11:50:57
11	<b>Q. And what document reflects that?</b>	11:45:41	11 <b>Q. And then the next page indicated that the City</b>	11:51:01
12	A. Would you like me to see if I can find it?	11:45:48	12 would grant that benefit to the president of Local 145,	11:51:05
13	<b>Q. Yes. What document -- what document are you</b>	11:45:53	13 correct?	11:51:10
14	<b>looking at now?</b>	11:46:00	14 MR. CHUNG: Document speaks for itself. Vague	11:51:11
15	A. This is Exhibit 405. I'm referring now to Tab	11:46:00	15 and ambiguous.	11:51:12
16	621 in Exhibit 405. At the top of what I've hand	11:46:46	16 THE WITNESS: Yes.	11:51:13
17	numbered as Page 3 of that document, on Slide Number 37.	11:46:55	17 BY MR. KLEVENS:	11:51:19
18	And the page number at the bottom right-hand corner is	11:47:00	18 <b>Q. Was it your understanding that the president</b>	11:51:19
19	19. It says, "Meet and confer 2002. Union presidential	11:47:02	19 of Local 145, unlike the presidents of MEA and POA, had	11:51:21
20	leave and retirement benefits current status of union	11:47:07	20 not had that benefit prior to 2002, correct?	11:51:28
21	presidents." There's a discussion in the slide at the	11:47:10	21 A. That would be my understanding.	11:51:34
22	bottom of that page, Slide 38, about presidential leave	11:47:14	22 <b>Q. And the document you reviewed indicated that</b>	11:51:35
23	and retirement benefits.	11:47:16	23 when the City proposed allowing all four union	11:51:49
24	On the following page, which I've numbered as	11:47:18	24 presidents -- what was the fourth union, by the way,	11:51:57
25	Page 4, on Slide 39, it talks about union presidential	11:47:21	25 aside from POA, Local 145 and MEA?	11:52:00
		55		57

1 A. We had the Firefighters the Police and the	11:52:05	1 Q. Did the -- did you review any documents that	11:56:46
2 MEA.	11:52:18	2 indicated whether that benefit was related in any way to	11:56:49
3 Q. Page 4 indicates four unions, does it not?	11:52:18	3 the approval of MP2 by the Retirement Board?	11:56:52
4 A. Yes.	11:52:21	4 A. Yes.	11:56:57
5 Q. What was the fourth union?	11:52:31	5 Q. What documents?	11:57:01
6 A. As I sit here at the moment, I don't recall.	11:52:33	6 A. May I review the file?	11:57:03
7 Q. And when the City proposed giving all four	11:52:39	7 Q. Yes. Sure. You're again reviewing	11:57:07
8 union presidents the right to use their union salary in	11:52:47	8 Exhibit 40 --	11:57:12
9 calculating retirement benefits, the City proposed that	11:52:52	9 A. 405.	11:57:13
10 that maximum salary would be capped, correct?	11:52:56	10 Q. Those are all documents that were provided to	11:57:20
11 A. Could I have that repeated, please.	11:52:58	11 you by the City, correct?	11:57:23
12 MR. KLEVENS: You can read that back.	11:53:03	12 A. Yes.	11:57:24
13 (Record read.)	11:53:21	13 Q. With the index, correct?	11:57:24
14 THE WITNESS: On this particular document,	11:53:22	14 A. Correct. True. While I'm doing this review,	11:57:27
15 which is Page 4 of Tab 21 of Exhibit 405, it talks about	11:53:40	15 can I have that question repeated.	11:58:17
16 a cap on the salary of Mr. Saathoff, the Local 145	11:53:45	16 MR. KLEVENS: Sure.	11:58:20
17 president. I don't see that it mentions a cap for the	11:53:51	17 (Record read.)	11:58:23
18 other unions.	11:53:54	18 THE WITNESS: Well, this isn't a complete	11:58:43
19 BY MR. KLEVENS:	11:53:55	19 answer. But the first document that I come to is at Tab	11:58:44
20 Q. So is it your understanding that the other	11:53:55	20 19, Page 5, Slide 32. Which says, "Meet and confer 2002	11:58:47
21 unions were uncapped? Is that your understanding?	11:53:58	21 agenda." And it lists six retirement issues. One is	11:58:54
22 A. Based on the slide at the bottom of Page 3 of	11:54:01	22 the funding ratio impact on the City contribution.	11:58:59
23 Tab 11 -- I'm sorry -- Tab 21 of Exhibit 405, the slide	11:54:35	23 Number 2 is the 2.5 percent at age 55 general member	11:59:02
24 is Number 38. It appears that there would -- was a	11:54:40	24 formula. Three other items are listed in the --	11:59:06
25 proposal to cap all the union presidents.	11:54:44	25 ///	11:59:06
	58		60
1 Q. At the same level, correct?	11:54:46	1 BY MR. KLEVENS:	11:59:10
2 A. Yes.	11:54:48	2 Q. What other three?	11:59:10
3 Q. And what was that level?	11:54:49	3 A. Increases in employee pickups. Retiree health	11:59:11
4 A. At that time it was \$108,000.	11:54:52	4 trust funding authority. Authority to pay 13th Check to	11:59:16
5 Q. What was that based on?	11:54:57	5 retirees. And then the fifth one -- or the sixth one is	11:59:20
6 A. It was based on the City labor relations	11:54:58	6 presidential leave and retirement benefits. Should I	11:59:26
7 manager's salary.	11:55:01	7 keep looking?	11:59:29
8 Q. And the cap was new, isn't that right, in	11:55:03	8 Q. Well, I'm just asking you what -- what the	11:59:30
9 2002? The benefit that had been available to the	11:55:11	9 basis of the answer was that you gave me.	11:59:33
10 presidents of MEA and POA prior to 2002 had been	11:55:16	10 A. And then the -- at Tab 21 the documents we'd	12:00:01
11 uncapped, correct?	11:55:21	11 already been referring to are part of the meet and	12:00:11
12 A. I don't know one way or the other.	11:55:22	12 confer agenda, closed session, May 6th, 2002, which	12:00:13
13 Q. Did the City provide you with documents that	11:55:31	13 discussed those specific issues related to the union	12:00:20
14 indicated the City was concerned about the fact that the	11:55:40	14 presidents. But it also talked about retirement issues.	12:00:23
15 benefit that had been paid for some years to the	11:55:48	15 On Tab 19, Page 2, Slide 4, says this under	12:02:04
16 presidents of MEA and POA -- the presidential benefit	11:55:51	16 the heading "status of negotiations bargaining authority	12:03:25
17 that had been paid for some years to the presidents of	11:55:55	17 April 16th." It says, "Conditioned all retirement	12:03:31
18 MEA and POA, was uncapped? Did the City provide you	11:55:59	18 enhancement on removal of the trigger in manager's	12:03:34
19 documents that indicated their concern about that?	11:56:03	19 proposal." And then, of course, the presidential union	12:03:37
20 A. I don't recall seeing any such documents.	11:56:05	20 presidents' issues are listed on these various slides at	12:04:03
21 Q. Now, did you review any documents that	11:56:07	21 that same meeting. So those would be the primary	12:04:08
22 indicated whether approval of the incumbent union	11:56:26	22 documents that I was referring to.	12:04:11
23 president benefit that's referred to on these slides	11:56:36	23 Q. Now, the -- why don't you hand me this for a	12:04:13
24 that are part of Tab 21 that you've been looking at?	11:56:42	24 minute. Thanks. Now, the removal of the trigger in a	12:04:19
25 A. Yes.	11:56:45	25 manager's proposal that you referred to on Page 2?	12:05:18
	59		61



1	A. Of tab?	12:05:23	1 exhibit.	12:09:35
2	<b>Q. 19.</b>	12:05:24	2 BY MR. KLEVENS:	12:09:40
3	A. Okay.	12:05:25	3 <b>Q. You were intending to highlight that portion</b>	12:09:41
4	<b>Q. That never happened, right?</b>	12:05:26	4 <b>that I just read, as well as other portions, correct?</b>	12:09:43
5	A. I need to review the document, if you don't	12:05:28	5 MR. CHUNG: Objection; document speaks for	12:09:45
6	mind, Counsel. As best I understand it, under the way	12:05:33	6 itself.	12:09:47
7	that term would be used, would have been used at this	12:06:26	7 MR. KLEVENS: Could I have read back what --	12:09:48
8	point in time in the negotiations, the trigger was not	12:06:29	8 counsel's original question.	12:09:49
9	removed. In other words, the initial proposal --	12:06:32	9 MR. KLEVENS: Sure.	12:09:51
10	proposal to lower the trigger to 75 percent in its form	12:06:38	10 (Record read.)	12:09:52
11	in that particular form was not approved.	12:06:44	11 THE WITNESS: Those only part -- that's Part	12:10:34
12	<b>Q. Right. So the answer to my question when I</b>	12:06:46	12A. There's a Part B and a Part C also.	12:10:36
13	<b>said that never happened, that's -- the answer to my</b>	12:06:49	13BY MR. KLEVENS:	12:10:38
14	<b>question is correct?</b>	12:06:53	14 <b>Q. You were intending to highlight Part A, which</b>	12:10:38
15	A. There were negotiations on the trigger. And	12:06:54	15I read to you, correct?	12:10:40
16	the ultimate resolution of that did not include lowering	12:06:58	16 A. Right.	12:10:41
17	the trigger to 75 percent.	12:07:02	17 <b>Q. And so with respect to Part A, the City was</b>	12:10:42
18	<b>Q. Right. So the -- where it says conditioned on</b>	12:07:04	18stating on this slide that its agreement to increase the	12:10:47
19	<b>removal of the trigger, removal of the trigger never</b>	12:07:06	19general member retirement factor up to 2.5 percent at	12:10:53
20	<b>happened, correct?</b>	12:07:11	20age 55 would be contingent on, among other things,	12:10:59
21	A. Under the terminology -- under the state of	12:07:11	21eliminating or reducing the trigger to 75, correct?	12:11:03
22	the negotiations and what that would specifically be	12:07:13	22 A. That's what the --	12:11:12
23	referring to on that particular date, I believe the	12:07:16	23 MR. CHUNG: Objection; vague and ambiguous.	12:11:13
24	answer would be yes.	12:07:18	24Document speaks for itself. Calls for speculation.	12:11:14
25	<b>Q. And --</b>	12:07:21	25 THE WITNESS: That's what that page says, yes,	12:11:17
		62		64
1	MR. CHUNG: Actually, Counsel, I'm not quite	12:07:40	1 that slide.	12:11:19
2	sure how these questions are relevant to his designation	12:07:41	2 BY MR. KLEVENS:	12:11:20
3	now. We're getting into some legal conclusion areas.	12:07:44	3 <b>Q. And that particular contingency did not occur,</b>	12:11:20
4	So I'm just kind of curious on --	12:07:47	4 <b>correct?</b>	12:11:23
5	MR. KLEVENS: Is that an objection?	12:07:51	5 A. In that form, correct.	12:11:23
6	MR. CHUNG: Sure.	12:07:53	6 <b>Q. The trigger was not reduced to 75 percent</b>	12:11:25
7	MR. KLEVENS: Okay.	12:07:54	7 <b>or -- or reduced at all from 82.3 percent, correct?</b>	12:11:28
8	MR. CHUNG: So we'll just put on the record	12:07:56	8 A. That's my understanding.	12:11:32
9	objection --	12:07:57	9 <b>Q. Okay. And you notice this refers to</b>	12:11:33
10	MR. KLEVENS: So noted.	12:07:58	10increasing the general member retirement factor. It	12:11:36
11	MR. CHUNG: -- based on relevance.	12:07:59	11doesn't say anything about the safety member retirement	12:11:39
12	BY MR. KLEVENS:	12:08:53	12factor. Do you see that?	12:11:41
13	<b>Q. And on Page 7 you've -- there's some</b>	12:08:53	13 A. Correct.	12:11:42
14	<b>highlighting. Is that yours?</b>	12:08:56	14 <b>Q. Does that refresh your recollection that in</b>	12:11:43
15	A. Yes.	12:08:59	152002 only the general member retirement factor was	12:11:45
16	<b>Q. Page 7 of Tab 19?</b>	12:08:59	16modified?	12:11:48
17	A. Correct.	12:09:02	17 A. That's correct.	12:11:48
18	<b>Q. And that indicated that the general member</b>	12:09:02	18 <b>Q. Not the safety member?</b>	12:11:49
19	<b>retirement benefit enhancement of 2.5 percent at 55</b>	12:09:07	19 A. Correct.	12:11:50
20	<b>would have a contingency that the unions would support</b>	12:09:14	20 <b>Q. Now, did you review any document that</b>	12:11:51
21	<b>and the CERS board would agree to eliminate or reduce</b>	12:09:17	21indicated that if MP2 was not approved in November 2002,	12:12:02
22	<b>the trigger established in the 1997 manager's proposal</b>	12:09:22	22that the in -- that the incumbent union presidential	12:12:03
23	<b>to 75 percent, correct?</b>	12:09:26	23benefit would not have been modified the way it was in	12:12:15
24	MR. CHUNG: Objection; vague and ambiguous as	12:09:28	242002?	12:12:18
25	to all that counsel read is not highlighted in the	12:09:30	25 A. I need to look at the documents again.	12:12:19
		63		65

1	MR. CHUNG: Also, Steve, you also have	12:12:30	1 with me your comments, Terri. I assure you that Ron is	12:22:59
2	documents behind counsel. So if you need to review	12:12:35	2 well aware of the contingent nature of the benefits,	12:23:03
3	those, feel free to.	12:12:37	3 after our repeated statements at the negotiations table	12:23:06
4	THE WITNESS: Thank you for that reminder.	12:12:38	4 regarding the benefits being contingent upon your noted	12:23:11
5	THE VIDEOGRAPHER: Excuse me, Counsel. I'll	12:13:34	5 approvals. Kathy was very specific on those points at	12:23:14
6	need to do a tape change in about two minutes.	12:13:36	6 every discussion. The various proposals are all	12:23:20
7	MR. KLEVENS: Why don't you do that while he's	12:13:38	7 specific to the necessary approvals and available	12:23:22
8	looking through his stuff.	12:13:40	8 funding from the reserves. Although this is not stated	12:23:24
9	THE VIDEOGRAPHER: We are off the record.	12:13:41	9 in this highlights to the department."	12:23:28
10	This concludes Tape 1 of the deposition. The time is	12:13:43	10 In the City Council minutes -- I'm sorry, the	12:24:47
11	12:12 p.m.	12:13:46	11SDCERS minutes of May 29th, 2002, which are at page --	12:24:52
12	(Discussion off the record.)	12:13:49	12at Tab 28 of Exhibit 405, on Page 36, it indicates that	12:24:59
13	THE VIDEOGRAPHER: We are back on the record.	12:16:21	13Mr. Ueberuaga stated at the meeting that the City has	12:25:06
14	This begins Tape 2 of the deposition. The time is	12:16:40	14tentative agreements with three of the four labor	12:25:11
15	12:15 p.m.	12:16:43	15unions. Next citation would be Tab 40 in Exhibit 405.	12:25:14
16	THE WITNESS: This is not a complete answer.	12:16:47	16It's a verbatim transcript of statements by Larry	12:33:41
17	But at Tab 24 of Exhibit 405 -- actually, I see at Tab	12:16:49	17Grissom at the -- on July 11th, 2002 where he says --	12:33:47
18	23 handwritten notes indicating that the presidential	12:16:57	18I'll just read it verbatim. "The issue at hand is that	12:33:58
19	leave was voted in by the City Council on May 6th.	12:17:02	19basic summary in the meet and confer this year there	12:34:01
20	However, on a memo dated May 13th, 2002, from the labor	12:17:14	20were between the City and the labor organizations	12:34:03
21	relations manager, Daniel Kelly, to Judie Italiano,	12:17:21	21certain benefits that were agreed to. The	12:34:06
22	president of MEA, the letter references a last, best and	12:17:26	22implementation of those benefits was made contingent	12:34:09
23	final proposal. On Page 2 of that tab it talks about	12:17:32	23upon this Board approving a revision to the 1996	12:34:12
24	the contingency of the trigger. And the attachment to	12:17:40	24manager's proposal. And the details of that will be	12:34:15
25	that particular document on Page 17 deals with	12:17:43	25discussed at great length."	12:34:18
		66		68

1	presidential leave issues. And that document is dated	12:17:48	1	MR. KLEVENS: Mr. Gabrielson, the --	12:35:07
2	May 13th, 2002.	12:17:51	2	THE WITNESS: Yes.	12:35:10
3	Tab 25 is a similar letter to the president of	12:18:26	3	BY MR. KLEVENS:	12:35:11
4	AFSCME, with a similar attachment. Tab 26 is related to	12:18:31	4	Q. Mr. Gabrielson?	12:35:11
5	the Firefighters Union. On Page 6 it notes that -- I'm	12:19:08	5	A. Yes.	12:35:11
6	going to back up on that answer and refer to Page 3	12:20:28	6	Q. The excerpt you just read. I don't mean to	12:35:11
7	first of Tab 26. Which is to the issue of the	12:20:31	7	interrupt you.	12:35:15
8	Firefighters' contract. And it talks about the	12:20:40	8	A. Yes.	12:35:15
9	proposal's being conditioned on removal of the trigger.	12:20:50	9	Q. But the excerpt that you just read from	12:35:15
10	Page 5 of that document under a date of May 10th, 2002,	12:20:55	10	Mr. Grissom --	12:35:18
11	it talks about full release time for a union president	12:21:02	11	A. Yes.	12:35:18
12	effective July 1, '02.	12:21:05	12	Q. -- is that something you drew out of the --	12:35:19
13	Under a date of May 21st, '02, at Tab 27, is	12:22:00	13	the minutes, or something the City drew out of the	12:35:21
14	an e-mail from Terri Webster to Dan that says, "The	12:22:07	14	minutes?	12:35:23
15	Local 145 write-up you sent out did not state that their	12:22:09	15	A. It's the -- appears to be a transcript.	12:35:23
16	increased offset was contingent on the Board laxing the	12:22:16	16	Q. I mean, are those Mr. Grissom's complete	12:35:31
17	trigger. I thought all" and the word "all" is all caps,	12:22:20	17	remarks, or is that some --	12:35:33
18	"I thought all retirement improvements, including the	12:22:24	18	A. No. That's an excerpt.	12:35:34
19	presidential leave," question mark, "were contingent on	12:22:27	19	Q. -- piece of what he said?	12:35:36
20	the trigger. Especially need Ron behind releasing the	12:22:31	20	A. That's an expert.	12:35:38
21	trigger since he runs the show at CERS."	12:22:37	21	Q. And who drew that excerpt?	12:35:40
22	And then at the top of that page, which,	12:22:42	22	A. I don't know.	12:35:42
23	again, is Tab 27 of Exhibit 405, the response coming	12:22:44	23	Q. You didn't?	12:35:43
24	back from Mike McGee to Dan Kelly, Ed Ryan and Terri	12:22:49	24	A. I didn't.	12:35:44
25	reb -- Terri Webster dated May 21st, says, "Dan shared	12:22:55	25	Q. Okay. Go for it.	12:35:45
		67		69	

1 A. Next would be Tab 44, in Exhibit 405, which is	12:35:51	1 members represented by Firefighters Local 145 the	12:42:35
2 minutes of the regular City Council meeting of	12:36:22	2 ability to convert annual leave accrued after July 1,	12:42:39
3 October 21st, 2002. Which appears to be approval at	12:36:24	3 2002 to service credit in SDCERS or extend their	12:42:44
4 that time of presidential leave and amendments of	12:36:34	4 participation in the system's deferred retirement option	12:42:48
5 Sections 24.0201 and 24.0301 of the Municipal Code.	12:36:38	5 plan."	12:42:51
6 Q. Was there a page reference on Tab 44, or was	12:37:35	6 Q. Does that have anything to do with the	12:42:54
7 that just the whole tab?	12:37:40	7 incumbent presidents' right to use union salary in	12:42:56
8 A. On Tab 44, did I say?	12:37:41	8 calculating their retirement benefits in your	12:43:00
9 Q. Yeah.	12:37:44	9 understanding?	12:43:04
10 A. Oh.	12:37:45	10 A. Probably not.	12:43:04
11 Q. City Council minutes.	12:37:47	11 Q. So why are you reading that to me in answer to	12:43:05
12 A. Yes. I'm sorry. Page 1 references that it's	12:37:49	12 my previous question?	12:43:07
13 the City Council meeting on Monday, October 21st, 2002.	12:37:55	13 A. I thought it pertained to the issue. And as I	12:43:09
14 And on Page 4, the last line, it says after	12:38:05	14 read it, it doesn't.	12:43:13
15 discussing -- well, let me back up. It says, "Pursuant	12:38:11	15 Q. Okay.	12:43:15
16 to the recently negotiated Memoranda of Understanding	12:38:14	16 A. And then Tab 51, minutes of the City Council	12:45:09
17 and associated agreements that the Firefighters Local	12:38:18	17 meeting of Tuesday, December 3rd, on Page 1 appears to	12:45:19
18 145, Municipal Employees Association, AFSCME Local 127	12:38:21	18 have approval of ordinance amending San Diego Municipal	12:45:23
19 and the Police Officers Association, the City agreed to	12:38:28	19 Code related to fiscal year 2003 negotiated retirement	12:45:26
20 implement a number of revisions to retirement benefits	12:38:33	20 benefits.	12:45:31
21 as defined in the San Diego Municipal Code. Those	12:38:35	21 Q. Is there anything that indicates whether or	12:45:37
22 benefit enhancements and associated San Diego Municipal	12:38:38	22 not that has anything to do with the incumbent	12:45:40
23 Code amendments are summarized as follows."	12:38:41	23 presidents' right to use their union salary in	12:45:42
24 And then on Page 5, at the top, a presidential	12:38:44	24 calculating retirement benefits?	12:45:45
25 leave is the very first one that's mentioned. Then Tab	12:38:48	25 A. Without further research, I wouldn't be able	12:45:46
	70		72
1 46, Ordinance Number 19121 at Page 2 talks about	12:39:17	1 to tell. It uses Municipal Code sections. I'd have to	12:46:06
2 amending the Municipal Code. And I quote, "Whereas	12:39:27	2 go back and do some cross-referencing.	12:46:09
3 Sections 24.0201 and 24.0301 must now be amended to	12:39:29	3 Q. But at this point you don't know that that	12:46:12
4 provide that our members serving as the duly elected	12:39:35	4 Municipal Code section has anything to do with that	12:46:14
5 president of a recognized employee labor organization	12:39:39	5 benefit; is that right?	12:46:16
6 may continue participating in a retirement system	12:39:42	6 A. As I sit here at the moment, no.	12:46:17
7 consistent with the governing Memorandum of	12:39:45	7 Q. In fact, presidential leave, the incumbent	12:46:19
8 Understanding between the City and his or her employee	12:39:48	8 presidents' right to calculate retirement benefits is	12:46:25
9 organization."	12:39:50	9 not provided for in the Municipal Code, is it? Isn't	12:46:29
10 Then there's a -- at Tab 49, minutes of the	12:41:12	10 that provided for by resolution enacted by the City	12:46:35
11 regular City Council meeting Monday, November 18th, 2002	12:41:17	11 Council as opposed to ordinance?	12:46:39
12 on Page 9. And in this case I'm referring to the upper	12:41:22	12 A. I don't recall.	12:46:40
13 right-hand corner for the page number. It reads as	12:41:28	13 Q. As you sit here, do you have any reason to	12:46:40
14 follows: "As a result of the recent contract	12:41:45	14 believe that what you just read to me from Tab 51 has	12:46:44
15 negotiations with the Police Officers Association,	12:41:48	15 anything whatever to do with the right of union	12:46:47
16 Firefighters Local 145, Municipal Employees Association,	12:41:52	16 presidents to use their union salary in calculating	12:46:51
17 and AFSCME Local 127, the City management team agreed to	12:41:57	17 their retirement benefits?	12:46:54
18 implement a number of revisions to the retirement	12:42:03	18 A. I don't know.	12:46:56
19 system. Ordinance 0-2003-67 was introduced at the	12:42:05	19 Q. Okay.	12:46:56
20 October 21, 2002 meeting of the City Council, which	12:42:10	20 A. Could I have the original question read back.	12:47:00
21 amends the San Diego Municipal Code to reflect the	12:42:14	21 (Record read.)	12:47:04
22 majority of the revisions to the retirement system	12:42:16	22 MR. KLEVENS: I don't have anything to add to	12:47:50
23 negotiated during the FY 2003 meet and confer process.	12:42:19	23 that answer at this time.	12:47:51
24 "However, Ordinance 0-2003-67 did not include	12:42:24	24 MR. KLEVENS: Okay. I think your counsel	12:47:52
25 the revisions to the retirement system. SDCERS, giving	12:42:30	25 wanted to break at this point. So is that correct?	12:47:55
	71		73

1	MR. CHUNG: Yeah. It's 12:45. How long do	12:47:59	1	status of negotiations bargaining authority, correct?	13:57:19
2	you want to do lunch? 30 minutes? I missed the	12:48:02	2	A. Yes.	13:57:18
3	conference call.	12:48:05	3	Q. This is dated April 16, 2002?	13:57:18
4	MR. KLEVENS: Oh, did you?	12:48:06	4	A. Yes.	13:57:21
5	MR. CHUNG: It was at 12:45. So I just	12:48:07	5	Q. And it says, "Conditioned all retirement	13:57:21
6	e-mailed saying I couldn't make it. We can do	12:48:09	6	enhancement on removal of the trigger in manager's	13:57:24
7	30 minutes and get back on to this.	12:48:12	7	proposal regarding service funding ratio," right?	13:57:28
8	MR. KLEVENS: I think to be safe we probably	12:48:13	8	A. Yes.	13:57:31
9	ought to make it 1:30 rather than --	12:48:16	9	Q. And then it lists retirement benefits,	13:57:32
10	MR. LEONE: Yeah, let's do 1:30.	12:48:20	10	correct, under there each with a little dash, correct?	13:57:37
11	MR. CHUNG: Okay. Or do you guys -- Steve, do	12:48:22	11	A. Yes.	13:57:39
12	you need any longer than that?	12:48:25	12	Q. One is retiree health, two is increase in	13:57:39
13	THE WITNESS: 45 minutes at a minimum. An	12:48:26	13	employee pickups, and three is increase in general	13:57:44
14	hour would be better.	12:48:29	14	member formula. Do you see that?	13:57:47
15	MR. CHUNG: Do you guys want to do an hour	12:48:30	15	A. I do.	13:57:48
16	then, if you guys are trying to make copies?	12:48:32	16	Q. You understood those were the retirement	13:57:49
17	MR. KLEVENS: Yeah, we can do 1:45 if you	12:48:34	17	enhancements that were referred to as being conditioned	13:57:52
18	want.	12:48:36	18	on removal of the trigger, correct?	13:57:55
19	THE VIDEOGRAPHER: We are off the record. The	12:48:37	19	A. Those are the three that are listed there.	13:57:57
20	time is 12:47 p.m.	12:48:39	20	Q. And none of those is the incumbent president	13:58:01
21	(Whereupon, the lunch recess was taken at		21	retirement benefit, correct?	13:58:05
22	12:48 p.m.)		22	A. Correct.	13:58:06
23			23	Q. And when I refer to the incumbent president	13:58:07
24	* * * *		24	retirement benefit, I'm referring to the right of the	13:58:12
25			25	incumbent presidents of the four labor organizations to	13:58:15

74

76

1	SAN DIEGO, CA; TUESDAY, OCTOBER 17, 2006; 1:54 P.M.		1	use their union salary to calculate their retirement	13:58:18
2		13:55:44	2	benefits. Are we agreeable on that definition?	13:58:22
3	THE VIDEOGRAPHER: Good afternoon. We are	13:55:44	3	A. Sure.	13:58:25
4	back on the record. The time is 1:54 p.m.	13:55:52	4	Q. Okay.	13:58:26
5	BY MR. KLEVENS:	13:55:55	5	MR. CHUNG: Counsel, do you mean union salary	13:58:28
6	Q. Good afternoon, Mr. Gabrielson.	13:55:56	6	plus City salary, or just union salary?	13:58:32
7	A. Good afternoon, Counsel.	13:55:58	7	MR. KLEVENS: Well, what I said was union	13:58:35
8	Q. You recall before lunch you gave me a rather	13:56:01	8	salary.	13:58:36
9	lengthy answer to a question I asked you concerning the	13:56:08	9	BY MR. KLEVENS:	13:58:36
10	incumbent presidents' right to use their union salary in	13:56:13	10	Q. What's your understanding of the incumbent	13:58:36
11	calculating retirement benefits, correct?	13:56:21	11	president benefit?	13:58:40
12	A. Yes.	13:56:23	12	A. Well, I think my understanding would agree	13:58:41
13	Q. And in answering it, you went through all of	13:56:24	13	with yours. Could I have your statement read back that	13:58:43
14	Exhibit 405, correct?	13:56:31	14	you just made.	13:58:45
15	A. Yes.	13:56:33	15	(Record read.)	13:58:46
16	Q. And picked out those parts that you thought	13:56:34	16	THE WITNESS: I believe they would not only	13:59:07
17	answered my question, correct?	13:56:37	17	use their union salary, but also the time, the service	13:59:09
18	A. Yes.	13:56:38	18	with the union.	13:59:12
19	Q. And you have Exhibit 405 in front of you?	13:56:39	19	BY MR. KLEVENS:	13:59:14
20	A. I do.	13:56:42	20	Q. In other words, the -- the years of service	13:59:17
21	Q. All right. Looking first at Tab 19, if you	13:56:43	21	with the union would be the years of service?	13:59:19
22	would.	13:56:52	22	A. No. I think what -- what it says is that you	13:59:22
23	A. Okay.	13:56:59	23	can combine the years of service with the -- with the	13:59:26
24	Q. Page 2, which was one of the pages you	13:57:06	24	City and the union.	13:59:28
25	mentioned. It indicates at the bottom half of the page	13:57:09	25	Q. Okay. And that benefit is distinguishable and	13:59:31

75

77

1 separate from another benefit called presidential leave,	13:59:40	1 A. Correct.	14:02:04
2 which is the right of a union president to take leave	13:59:43	2 Q. And it enclosed the last, best and final	14:02:04
3 from his position as a City employee in order to serve	13:59:45	3 proposal for the MEA, correct?	14:02:07
4 as a union president, correct?	13:59:51	4 A. Correct.	14:02:09
5 A. And still have his salary part of the pension	13:59:53	5 Q. And then you referred specifically to Page 17?	14:02:09
6 plan.	13:59:57	6 A. Yes.	14:02:16
7 Q. Well, and still receive his salary from the	13:59:58	7 Q. And you put a little sticky on there, didn't	14:02:17
8 City in whatever capacity he or she might serve.	14:00:01	8 you?	14:02:19
9 That -- that a City employee's allowed to take leave	14:00:08	9 A. Correct.	14:02:19
10 from his City job in order to serve as a union	14:00:11	10 Q. Now, if you look at Page 17, that's the	14:02:20
11 president. That's a different benefit than the	14:00:17	11 presidential -- that's a full description of the	14:02:23
12 incumbent president benefit, correct?	14:00:20	12 presidential leave benefit and doesn't -- I'm sorry. My	14:02:26
13 A. Yes.	14:00:23	13 little microphone just fell out. I'm going to repeat	14:02:35
14 Q. Okay. Now, you referred to some handwritten	14:00:23	14 the question.	14:02:38
15 notes after you referred to Tab 19. And I had	14:00:32	15 That page refers to the presidential leave	14:02:39
16 difficulty finding them, where you referred to them.	14:00:37	16 benefit and doesn't say one word about the incumbent	14:02:42
17 But I did find handwritten notes on Tab 22. Is that the	14:00:42	17 presidents' right to use union salary or union and City	14:02:47
18 ones?	14:00:45	18 salary combined to calculate his retirement benefits,	14:02:52
19 A. I'm sorry. That would be the handwritten	14:00:45	19 correct?	14:02:56
20 notes, yes. Tab 22.	14:00:48	20 A. That's correct.	14:02:56
21 Q. Okay. Now, what's the significance of that	14:00:50	21 Q. So this has -- would not be something that you	14:02:59
22 handwritten note in connection with the incumbent	14:00:52	22 should have pointed to in answering my question; isn't	14:03:02
23 president benefit?	14:00:56	23 that right?	14:03:04
24 A. This particular note only references the	14:00:58	24 A. True.	14:03:04
25 presidential leave.	14:01:00	25 Q. And then you referred us to Tab 25. That's a	14:03:05
	78		80
1 Q. So it does not reference the incumbent	14:01:02	1 similar document for Local 127 AFSCME, A-F-S-C-M-E,	14:03:14
2 president benefit, correct?	14:01:06	2 correct?	14:03:21
3 A. Correct.	14:01:07	3 A. Yes.	14:03:21
4 Q. Okay. So it wouldn't be part of your answer	14:01:08	4 Q. That's another public employee union in San	14:03:21
5 to my question?	14:01:10	5 Diego, correct?	14:03:25
6 A. Your question had only to do with the	14:01:11	6 A. Correct.	14:03:25
7 incumbent president benefit?	14:01:19	7 Q. And that document also contains the	14:03:26
8 Q. Correct.	14:01:21	8 presidential leave provision as its last page, correct?	14:03:34
9 A. Okay. Yes.	14:01:21	9 A. Correct.	14:03:37
10 Q. And what I asked you was whether you reviewed	14:01:22	10 Q. And that page says nothing whatever about the	14:03:38
11 any document that indicated that if MP2 was not approved	14:01:24	11 right of incumbent union presidents to use union salary	14:03:40
12 in November 2002, that the incumbent union president	14:01:28	12 in calculating their retirement benefit; isn't that	14:03:46
13 benefit would not have been modified the way it was in	14:01:32	13 right?	14:03:50
14 2002. This would not be a document you would point to	14:01:35	14 A. True.	14:03:50
15 to support -- to support that, correct?	14:01:38	15 Q. And then you referred us to Tab 26. And	14:03:50
16 A. Correct.	14:01:41	16 that -- that is a reference to the last, best and final	14:04:10
17 Q. All right. And then you referred us to Tab	14:01:41	17 offer to Local 145; isn't that right?	14:04:14
18 24, correct?	14:01:46	18 A. Yes.	14:04:18
19 A. I didn't make a list of the tabs. But --	14:01:49	19 Q. Now, is there any indication in that document	14:04:19
20 Q. But you recall referring to the letter to	14:01:53	20 of a reference to the right of incumbent union	14:04:23
21 Ms. Italiano, correct?	14:01:58	21 presidents to use their union salary or their union and	14:04:28
22 A. Yes.	14:01:59	22 City salary combined in calculating their retirement	14:04:33
23 Q. And it's dated May 13, 2002, correct?	14:01:59	23 benefits?	14:04:35
24 A. Correct.	14:02:02	24 A. There doesn't appear to be.	14:04:39
25 Q. And it's from Mr. Kelly?	14:02:03	25 Q. So that's also a document that should not have	14:04:49
	79		81

1 been referred to in answering my question, correct?	14:04:51	1 Q. And this was just part of the documentation	14:08:39
2 A. That's correct.	14:04:54	2 that they sent you, correct?	14:08:41
3 Q. Then you referred us to an e-mail exchange at	14:04:54	3 A. Correct.	14:08:43
4 Tab 27, correct?	14:05:17	4 Q. And is there any reference in that -- in that	14:08:43
5 A. Yes.	14:05:19	5 excerpt to the incumbent union president benefit?	14:08:50
6 Q. And the highlighted portion makes reference to	14:05:21	6 A. No.	14:08:53
7 presidential leave, does it not?	14:05:31	7 Q. So why did you refer to that in responding to	14:08:55
8 A. It does.	14:05:33	8 my question?	14:08:59
9 Q. Does it say anything that makes you believe it	14:05:34	9 A. This quote here is generic and would --	14:08:59
10 refers to the incumbent union president benefit?	14:05:38	10 doesn't mention any specific benefits. It says certain	14:09:11
11 A. No.	14:05:41	11 benefits. So --	14:09:14
12 Q. So that's also a document that should not have	14:05:45	12 Q. There's no reason to know that that includes	14:09:16
13 been referred to in response to my question?	14:05:51	13 the incumbent union presidential benefit, is there?	14:09:18
14 A. Correct.	14:05:53	14 A. There's no reason to exclude it either. It	14:09:21
15 Q. And the date on this document is what?	14:05:54	15 isn't specific on exactly what it's talking about.	14:09:24
16 A. On this e-mail?	14:06:12	16 Q. But you couldn't point to that and say this	14:09:26
17 Q. Yes.	14:06:14	17 shows that the incumbent union presidential benefit was	14:09:29
18 A. The e-mail from Terri Webster is May 21st,	14:06:15	18 contingent on action by the SDCERS board, could you?	14:09:32
19 2002. And the response from Mike McGee is May 21st,	14:06:19	19 A. No.	14:09:36
20 2002.	14:06:23	20 Q. And then you referred us to Tab 44, City	14:09:37
21 Q. And those dates are a little less than two	14:06:24	21 Council minutes from April 21, 2002, correct?	14:09:46
22 months before the Retirement Board rejected the City's	14:06:33	22 A. October 21st, 2002. You said -- you said Tab	14:09:48
23 proposal to lower the trigger, correct?	14:06:37	23 344?	14:09:53
24 A. Correct.	14:06:40	24 Q. Yes.	14:09:53
25 Q. And then you referred us to Tab 28. The first	14:06:41	25 A. Yes.	14:09:54
82		84	
1 page was dated May 29, 2002; is that right?	14:06:56	1 Q. I misspoke. October 21, correct?	14:09:56
2 A. Correct.	14:06:59	2 A. Yes.	14:09:59
3 Q. And then you referred us to Page 36?	14:07:00	3 Q. And you referred to the bottom of Page 4 and	14:09:59
4 A. Yes.	14:07:07	4 the top of Page 5. That lists the various benefits that	14:10:04
5 Q. Now, is there anything on that page that	14:07:08	5 are -- what does it say on the -- on the bottom of	14:10:17
6 refers to the incumbent union presidential benefit	14:07:10	6 Page 4?	14:10:23
7 giving the right to union presidents of four unions to	14:07:17	7 A. It says, "Those benefit enhancements and	14:10:23
8 use union salary or union and City salary combined in	14:07:22	8 associated San Diego Municipal Code amendments are	14:10:28
9 calculating their retirement benefits?	14:07:26	9 summarized below."	14:10:31
10 A. No.	14:07:27	10 Q. So this is a listing of various benefits,	14:10:33
11 Q. So that's another document that should not	14:07:50	11 retirement benefits that the City agreed to in recently	14:10:50
12 have been referred to in response to my question?	14:07:53	12 concluded negotiations with its employee unions; is that	14:10:55
13 A. Correct.	14:07:55	13 right?	14:10:58
14 Q. And then you referred us to Tab 40. That's a	14:07:55	14 A. Yes.	14:10:58
15 partial transcript of something that Lawrence Grissom	14:08:14	15 Q. And then it lists the various benefits,	14:10:59
16 said at a particular retirement board meeting; is that	14:08:20	16 correct?	14:11:01
17 right?	14:08:23	17 A. Correct.	14:11:01
18 A. Correct.	14:08:23	18 Q. And the first one is presidential leave,	14:11:02
19 Q. You don't know whether he said anything else	14:08:24	19 correct?	14:11:05
20 at a later time or a prior time that was consistent or	14:08:26	20 A. Correct.	14:11:05
21 inconsistent with this, correct?	14:08:29	21 Q. And does that make any reference at all to the	14:11:06
22 A. No. Without reviewing the file.	14:08:31	22 incumbent president benefit?	14:11:09
23 Q. And you didn't pick out this particular	14:08:34	23 A. No.	14:11:13
24 excerpt, the City did, correct?	14:08:37	24 Q. In fact, that makes reference to the benefit	14:11:13
25 A. True.	14:08:38	25 that was referred to in Tabs 24, 25 and 26, the	14:11:15
83		85	

1 presidential leave benefit, correct?	14:11:19	1 right?	14:15:54
2 A. Correct.	14:11:21	2 A. Yes.	14:15:54
3 Q. The right of a -- of a union president to take	14:11:21	3 Q. And you didn't pick the pages, again, the City	14:15:54
4 leave from his job to serve as a union president,	14:11:25	4 did?	14:15:57
5 correct?	14:11:28	5 A. Correct.	14:15:57
6 A. Correct. Correct.	14:11:28	6 Q. And is there anything in those pages that	14:15:58
7 Q. It has nothing to do with the incumbent	14:11:30	7 makes reference to the incumbent president benefit?	14:16:00
8 president benefit, correct?	14:11:32	8 A. No.	14:16:04
9 A. Correct.	14:11:33	9 Q. Now, sir, you have your binder we've marked as	14:16:13
10 Q. So that's another document that should not	14:11:34	10 Exhibit 602.	14:16:29
11 have been referred to in answer to my question, correct?	14:11:36	11 A. Certainly.	14:16:30
12 A. Correct.	14:11:39	12 Q. Actually, I'll have you use the reporter's set	14:16:31
13 Q. And then you referred to Tab 46. And the	14:11:39	13 so we can be sure we're all looking at the same thing.	14:16:45
14 amendment to certain provisions of the Municipal Code by	14:11:57	14 We have certain of the tabs from your binder duplicated.	14:16:50
15 Ordinance 19121, correct?	14:12:02	15 Any time you want to --	14:16:54
16 A. Correct.	14:12:05	16 A. Could I have the binder, also.	14:16:55
17 Q. And that ordinance doesn't refer anywhere,	14:12:06	17 Q. -- satisfy yourself that we're correctly	14:16:56
18 does it, to the incumbent president benefit?	14:12:11	18 copying it, all right?	14:17:00
19 A. No.	14:12:14	19 A. Certainly.	14:17:00
20 Q. So that's another document that should not	14:13:32	20 MR. CHUNG: Can I see that one second. Is 602	14:17:01
21 have been referred -- should not have been referred to	14:13:34	21 a complete --	14:17:05
22 in response to my question?	14:13:36	22 MR. KLEVENS: No. Certain tabs.	14:17:06
23 A. Correct.	14:13:37	23 MR. CHUNG: We've previously marked this	14:17:09
24 Q. And Tab 49 that you referred to, City Council.	14:13:38	24 notebook at 602 in the morning session.	14:17:11
25 And this is -- this is a City Council action	14:13:50	25 MR. LEONE: 602 was marked as the complete	14:17:13
	86		88
1 November 18th, 2002; is that right?	14:13:53	1 notebook.	14:17:13
2 A. Yes.	14:13:55	2 MR. CHUNG: Now you -- this excerpt needs to	14:17:13
3 Q. And these are just certain pages picked out	14:13:56	3 have a different --	14:17:15
4 from -- from the City Council minutes; isn't that right?	14:14:03	4 MR. KLEVENS: Okay. Let's call the excerpt	14:17:15
5 A. They appear to be, yes.	14:14:07	5 602-A. Can we do that? And will you supply to the	14:17:19
6 Q. And you didn't pick out those pages, right?	14:14:14	6 court reporter the complete 602?	14:17:27
7 A. No.	14:14:16	7 MR. CHUNG: Sure.	14:17:29
8 Q. The City did that?	14:14:16	8 (Exhibit 602-A was marked for identification.)	14:17:29
9 A. Yes.	14:14:17	9 MR. KLEVENS: Okay. You'll be able to do that	14:17:46
10 Q. And you referred to Page 9. The results of	14:14:18	10 relatively quickly, I assume?	14:17:47
11 negotiations with the City's unions?	14:14:27	11 MR. CHUNG: I believe so. Yes.	14:17:49
12 A. Correct.	14:14:30	12 MR. KLEVENS: So the City will provide the	14:17:51
13 Q. There's no reference there whatsoever to the	14:14:33	13 complete 602 to the court reporter. And in the meantime	14:17:53
14 incumbent president benefit, is there?	14:14:35	14 we will look at 602-A, which are copies of Tabs 1, 3, 4,	14:17:58
15 A. No. Not on Page 9.	14:14:37	15 155, 9, 11, 13, 16, 18 and 19 from Exhibit 602. All	14:18:05
16 Q. Is there any reference in this document that	14:15:02	16 right.	14:18:15
17 you're aware of to incumbent president benefit?	14:15:05	17 THE WITNESS: Yes.	14:18:15
18 A. No.	14:15:10	18 BY MR. KLEVENS:	14:18:15
19 Q. That's another document that should not have	14:15:30	19 Q. All right. Look at Tab 1, if you would.	14:18:15
20 been referred to in answer to my question?	14:15:32	20 That's your engagement letter; is that correct?	14:18:21
21 A. True.	14:15:33	21 A. Correct.	14:18:23
22 Q. And Tab 51 was the last one. That's again a	14:15:33	22 Q. It says that hourly billing rates "please	14:18:24
23 group of hand-picked pages from -- from what -- what?	14:15:43	23 refer to the attached schedule." I didn't find that	14:18:41
24 A. City Council meeting of December 3rd, 2002.	14:15:48	24 attached schedule. Is it there?	14:18:44
25 Q. And these are just certain hand-picked pages,	14:15:51	25 A. No, it isn't.	14:18:47
	87		89

1	<b>Q. Why is that?</b>	14:18:53	1 time on the account. Showing the amount of time that I	14:23:53
2	A. This document was e-mailed back to my office.	14:18:53	2 put in and two other people.	14:23:53
3	And I don't believe that that particular page was	14:19:05	3	<b>Q. These are people that work under you?</b>
4	included when it was e-mailed back for some reason.	14:19:09	4	A. Yes.
5	<b>Q. And there's no description of your assignment</b>	14:19:12	5	<b>Q. Now, Exhibit 9 is a letter from a paralegal</b>
6	<b>in the engagement letter, correct?</b>	14:19:15	6	<b>who works for the City; is that right?</b>
7	A. Correct.	14:19:19	7	A. Yes.
8	<b>Q. It's just a discussion of the way in which you</b>	14:19:19	8	<b>Q. She sent these documents to you that are</b>
9	<b>get paid, correct?</b>	14:19:21	9	<b>listed 1 through 28?</b>
10	A. Correct.	14:19:22	10	A. Yes.
11	<b>Q. And Tab 3, those are your various invoices; is</b>	14:19:23	11	<b>Q. Did you review all those documents?</b>
12	<b>that right?</b>	14:19:37	12	A. I did.
13	A. Yes.	14:19:37	13	<b>Q. Then attached is a description of the</b>
14	<b>Q. And have those invoices all been paid?</b>	14:20:05	14	<b>documents, correct?</b>
15	A. The last time I checked on this, which was	14:20:09	15	A. Correct.
16	probably at least a week to ten days ago, the first	14:20:30	16	<b>Q. Who prepared that?</b>
17	invoice had been paid and retainer of \$10,000 had been	14:20:36	17	A. That was provided with the documents when they
18	paid. I don't know if the other ones had been paid yet	14:20:41	18	came.
19	or not.	14:20:44	19	<b>Q. And then following that is a letter from a</b>
20	<b>Q. So it's possible the City still owes you most</b>	14:20:46	20	<b>legal secretary dated September 1st; is that right?</b>
21	<b>of these billed amounts?</b>	14:20:59	21	A. Yes.
22	A. It's possible.	14:21:00	22	<b>Q. And that's additional documents provided?</b>
23	<b>Q. And the billed amounts total about \$100,000,</b>	14:21:01	23	A. Yes. The first one was a videotape.
24	<b>correct? You may have double billed them. It may be</b>	14:21:08	24	<b>Q. What was the significance of that document?</b>
25	<b>\$92,000 and change.</b>	14:21:37	25	A. The videotape was a presentation that
		90		92

1	A. I believe -- leaving off the pennies, these	14:21:41	1 Mr. Aguirre made in what was called a community forum on	14:25:35
2	three invoices would total \$68,787.	14:22:17	2 June 29th, 2006, that I actually attended in person.	14:25:40
3	<b>Q. I show -- I don't want to spend a lot of time</b>	14:22:34	3 But I wanted a copy of the tape so I could review it.	14:25:44
4	<b>on this. But I show invoices for 8450 and then 23,706,</b>	14:22:37	4 In which he showed documents and explained the case.	14:25:46
5	<b>correct?</b>	14:22:43	5	<b>Q. Did you rely on his explanation of the case?</b>
6	A. True.	14:22:43	6	A. I relied on his explanation for background,
7	<b>Q. And those two total 32,000?</b>	14:22:43	7	yes.
8	A. Correct.	14:22:46	8	<b>Q. And you assumed what he said was true?</b>
9	<b>Q. And then the next invoice is for 23,700,</b>	14:22:46	9	A. In cases where he said anything that I found
10	<b>correct?</b>	14:22:53	10	not to be true -- and I don't recall any instances of
11	A. You already added that in.	14:22:53	11	that -- once I reviewed the documents, then I would --
12	<b>Q. I see. I got it. I got it. Yeah. So that's</b>	14:22:56	12	then I would rely on the documents.
13	<b>where the discrepancy is. Okay. And then after the</b>	14:23:00	13	<b>Q. Did he indicate at the community forum that</b>
14	<b>432-, then you have 36-; is that right?</b>	14:23:04	14	<b>certain retirement benefits were illegal?</b>
15	A. That's correct.	14:23:12	15	A. As best I recall he did.
16	<b>Q. So 32- and 36- is 68,000?</b>	14:23:13	16	<b>Q. And did you assume that was accurate?</b>
17	A. Correct.	14:23:17	17	A. For purposes of the analysis that I did in
18	<b>Q. And then Exhibit 4 are unbilled charges,</b>	14:23:17	18	this case. I don't think it matters whether they're
19	<b>correct?</b>	14:23:25	19	legal or illegal. I just took that as background
20	A. Correct.	14:23:25	20	information as to the City's position.
21	<b>Q. And for October -- first half of October you</b>	14:23:25	21	<b>Q. And what's the second document?</b>
22	<b>have 20,000; is that right?</b>	14:23:29	22	A. The second document would be the initial
23	A. Yes. That's through Sunday, October 15th.	14:23:30	23	version of the June 30th, 2003 audit of the City.
24	<b>Q. And then what's Exhibit 5?</b>	14:23:36	24	<b>Q. Prepared by whom?</b>
25	A. Exhibit 5 is just a breakdown of who spent the	14:23:48	25	A. It was prepared by not by KPMG. I'm trying to
		91		93



1 think of the name of the firm. As I sit here at the	14:27:25 1	Q. Yeah.	14:33:10
2 moment, I don't recall the name of the firm.	14:27:32 2	A. I don't recall.	14:33:13
3 Q. Now, what's the next page?	14:27:34 3	Q. Well, did he do that at some point?	14:33:13
4 A. The next page and continuing pages are	14:27:37 4	A. Yes. He went through the documents.	14:33:14
5 handwritten notes in my handwriting.	14:27:42 5	Q. And did he give you his take on the -- their	14:33:17
6 Q. And the first page of notes was taken when?	14:27:45 6	significance?	14:33:22
7 A. September 12th, 2006.	14:27:50 7	A. He pointed out certain passages that he	14:33:22
8 Q. And in connection with what?	14:28:00 8	thought were relevant to the City's case.	14:33:28
9 A. This particular page would have likely been	14:28:02 9	Q. And did you take any notes at the meeting?	14:33:29
10a --	14:28:26 10	A. There were a series of meetings during that	14:33:39
11 Q. You're now looking at what, Exhibit 3?	14:28:27 11	week. Any notes that I took at any meeting or phone	14:33:44
12 A. Exhibit 3, yes. And like any other	14:28:29 12	call would be in this file that's in front of you.	14:33:49
13 Exhibit 602, Tab 3 to the invoice, invoices. That would	14:28:33 13	Q. And so after the reference to the meeting with	14:33:53
14 have been a telephone conference on September 12th	14:28:39 14	Mike on the 18th, then what's the rest?	14:33:58
15 involving myself, Christine Fitzgerald and Joe	14:28:42 15	A. It says, "Opposing actuary, opposing	14:34:00
16 Esuchanko.	14:28:49 16	accountant, 27th or 28th. More likely." I believe	14:34:07
17 Q. And what was the purpose of that?	14:28:49 17	that's referring to potential deposition dates.	14:34:13
18 A. As best I recall, the purpose of the call was	14:28:53 18	Q. They want you to attend those depositions?	14:34:17
19 to review the timing of the work that Mr. Esuchanko and	14:29:03 19	A. As best I recall, yes.	14:34:20
20 myself were going to do on the case and discuss	14:29:12 20	Q. And did you, in fact, attend depositions of	14:34:23
21 production of documents.	14:29:19 21	the opposing actuary?	14:34:25
22 Q. What do you mean production of documents?	14:29:22 22	A. Yes. I attended the deposition of Mr. Husted.	14:34:28
23 A. What documents were available in the case to	14:29:25 23	Q. And did you provide notes to the City Attorney	14:34:36
24 review.	14:29:29 24	representatives in that deposition?	14:34:38
25 Q. You mean in addition to the ones that had been	14:29:29 25	A. Is your question did I provide them notes	14:34:39
	94		96

1 sent to you, or what? You got all these documents that	14:29:35 1	ahead of time, or did I make some notes during the	14:34:53
2 were sent to you in July and on September 1st, correct?	14:29:45 2	meeting?	14:34:55
3 What additional documents are you referring to?	14:29:52 3	Q. During the meeting.	14:34:56
4 A. Based on the one page of notes, which is the	14:29:54 4	A. Yes, I did.	14:34:57
5 only page that I have that relates to that particular	14:30:20 5	Q. And those are in the stack?	14:35:11
6 phone call, it doesn't say anything about documents. So	14:30:23 6	A. (Indicating.)	14:35:13
7 I'll withdraw that part of my answer.	14:30:26 7	Q. We'll get to it.	14:35:14
8 Q. And so what does it say in your notes? Read	14:30:28 8	A. Okay.	14:35:17
9 it into the record.	14:30:33 9	Q. And then there's a reference to Price	14:35:18
10 A. It says, "Meeting with Mike on 18th."	14:30:34 10	Waterhouse. What's that?	14:35:25
11 Q. That's Mr. Aguirre?	14:30:39 11	A. As best I recall, that related to a question	14:35:26
12 A. Yes.	14:30:40 12	about who was involved in the actuarial computations	14:35:39
13 Q. And does that refer to September 18th?	14:30:41 13	relative to the June 30th, 2003 time period. And as	14:35:47
14 A. Yes, it does.	14:30:46 14	best I recall, the answer was that Christine's	14:35:52
15 Q. What occurred at that meeting?	14:31:03 15	understanding was that Price Waterhouse was somehow	14:35:55
16 A. As best I recall, that was a meeting in San	14:31:04 16	involved in that.	14:35:57
17 Diego with Mr. Aguirre and with Mr. Esuchanko and	14:32:29 17	Q. What's the next page? What's the significance	14:35:58
18 several City staff to discuss the case.	14:32:34 18	of what you're writing there at the top? And when were	14:36:07
19 Q. And do you recall what you discussed?	14:32:39 19	these notes made?	14:36:11
20 A. I believe that was the meeting when documents	14:32:41 20	A. These documents don't appear to be in order.	14:36:12
21 were distributed, which ultimately became the binder	14:32:52 21	This appears to be --	14:36:18
22 known as Exhibit 405.	14:32:59 22	Q. They're in the same order as in your book,	14:36:19
23 Q. So Mr. Aguirre went through those documents	14:33:01 23	correct? Second page is the same. You don't have to go	14:36:23
24 and gave you his take on their significance?	14:33:03 24	through all of them.	14:36:40
25 A. On that particular day?	14:33:06 25	A. Yes.	14:36:41
	95		97

1	Q. Second page is the same, right?	14:36:41	1	A. Yes.	14:39:15
2	A. Yes.	14:36:42	2	Q. All right.	14:39:15
3	Q. So if they're not in order in Exhibit 602-A,	14:36:43	3	A. Of Exhibit 602.	14:39:16
4	they're also not in order in 602?	14:36:46	4	Q. Right. And also 602-A, correct?	14:39:19
5	A. Correct.	14:36:48	5	A. Correct.	14:39:21
6	Q. That's the way you kept the notes; is that	14:36:48	6	Q. All right. What's the next line say on this	14:39:21
7	right?	14:36:50	7	note?	14:39:25
8	A. This is the way that I put them into the	14:36:50	8	A. Can't quite read my writing. I think it says	14:39:25
9	binder.	14:36:52	9	"Then went to actuarial valuation." In parentheses it	14:39:45
10	Q. Okay. So when were the notes on Page 2 of the	14:36:52	10	says "was buried in the Cheiron calculation. So went	14:39:50
11	notes taken?	14:36:56	11	back a year before."	14:39:55
12	A. These notes appear to have been taken in the	14:36:58	12	Q. This refers to something Mr. Esuchanko told	14:39:56
13	last week or two. This would, to the best of my	14:37:03	13	you he did in these DROP calculations after his	14:40:00
14	recollection, reflect a conversation with Mr. Esuchanko	14:37:08	14	deposition?	14:40:03
15	regarding his calculations of the DROP factor, which is	14:37:13	15	A. Yes.	14:40:03
16	highlighted or discussed in Tab 11.	14:37:22	16	Q. And the next page, is that part of the same	14:40:04
17	Q. And what does it mean when it says "478	14:37:25	17	conversation?	14:40:10
18	general, 368 safety"?	14:37:30	18	A. Doesn't appear to be.	14:40:11
19	A. To the best of my recollection, what that	14:37:33	19	Q. So when are the notes -- this is now the third	14:40:19
20	means is that in the DROP program there were 478 general	14:37:35	20	page of notes. When were those notes taken?	14:40:22
21	members and 368 safety members.	14:37:41	21	A. I don't know.	14:40:26
22	Q. And then what does the next line say?	14:37:43	22	Q. Do you know in connection with what, whether a	14:40:44
23	A. It's kind of in shorthand. I believe it means	14:37:48	23	conversation, a meeting, phone call?	14:40:50
24	calculated the actual June 30th, 2005 liability.	14:37:51	24	A. I don't recall.	14:40:52
25	Q. And who did that calculation?	14:37:55	25	Q. What does it say?	14:40:54
		98			100

1	A. Mr. Esuchanko.	14:37:57	1	A. It says, "Cost of 1.4 at 6-30-05 components,	14:40:57
2	Q. And when did he do it?	14:37:58	2	three days to break, one day for individuals by	14:41:08
3	A. In the last week or two.	14:38:00	3	Thursday."	14:41:14
4	Q. Did you discuss whether he had done that	14:38:03	4	Q. What does that refer to? Do you know?	14:41:15
5	calculation at his deposition or prior to his	14:38:06	5	A. I don't recall.	14:41:16
6	deposition -- strike that.	14:38:11	6	Q. And then the rest on Page 3?	14:41:26
7	You attended Mr. Esuchanko's deposition,	14:38:19	7	A. To read it into the record?	14:41:30
8	correct?	14:38:17	8	Q. Yes.	14:41:32
9	A. I attended the second day of it.	14:38:18	9	A. It says DOB.	14:41:33
10	Q. Oh, you weren't there the first day?	14:38:21	10	Q. That stands for date of birth; is that right?	14:41:36
11	A. No.	14:38:23	11	A. Likely. I don't have an independent	14:41:40
12	Q. Did you review the transcript?	14:38:23	12	recollection of that. Then it says five days. Then it	14:41:43
13	A. I did.	14:38:27	13	says DOE.	14:41:48
14	Q. And were these calculations in connection with	14:38:29	14	Q. What does that stand for?	14:41:49
15	DROP among the calculations that Mr. Esuchanko described	14:38:36	15	A. As I sit here at the moment, I don't recall.	14:41:50
16	at his deposition?	14:38:40	16	Then it says, "Comp at time of benefit granted." Then	14:41:56
17	A. I don't believe so.	14:38:41	17	it is says, "DROP plan calcs" and "purchase of service	14:42:01
18	Q. Did you have any discussion with Mr. Esuchanko	14:38:44	18	credits."	14:42:04
19	about why these calculations had not been done prior to	14:38:54	19	Q. So you don't have any understanding of the	14:42:05
20	his deposition?	14:38:57	20	significance of those notes?	14:42:08
21	A. No.	14:38:58	21	A. I don't have any recollection of what the	14:42:09
22	Q. Did you discuss that with anyone?	14:39:00	22	context would be, no.	14:42:11
23	A. No.	14:39:02	23	Q. And then the next two pages, are the next two	14:42:12
24	Q. What were the significance of these -- well,	14:39:03	24	pages in your binder blank?	14:42:16
25	we'll get to the cal -- the calculations are on Tab 11?	14:39:12	25	A. No.	14:42:20
		99			101

1	Q. Okay. And is the next page in your binder one	14:42:20	1	A. I don't recall. I don't know if someone else	14:45:20
2	that begins 7-19-06?	14:42:24	2	was indicating they needed them or if it was me.	14:45:24
3	A. Correct.	14:42:27	3	Q. And then the next line is a phone number; is	14:45:26
4	Q. Okay. So that's Page 4, correct?	14:42:28	4	that right?	14:45:30
5	A. Page 4 of the notes?	14:42:33	5	A. Correct.	14:45:30
6	Q. Yes.	14:42:38	6	Q. And what's that number after the phone number?	14:45:31
7	A. Yes.	14:42:47	7	A. That's the access code for the call-in number	14:45:32
8	Q. Yeah. I'd like you to not change the order of	14:42:47	8	that I use at my office.	14:45:36
9	these things.	14:42:53	9	Q. Okay. And then Troy, Michigan?	14:45:37
10	A. Yeah. Let me put them back in order here.	14:42:53	10	A. That's where Mr. Esuchanko lives.	14:45:39
11	MR. CHUNG: Yeah. That's the first page.	14:43:04	11	Q. And then it says Kevin. Who's that?	14:45:42
12	Your right hand has the first one.	14:43:06	12	A. The only Kevin that I know that's connected to	14:45:45
13	THE WITNESS: Okay. Okay.	14:43:08	13	this case is Kevin Christianson. And I believe what	14:46:28
14	BY MR. KLEVENS:	14:43:15	14	that's referring to is that Mr. Aguirre had indicated	14:46:32
15	Q. Now you're looking at Page 4?	14:43:16	15	that he was having documents assembled, or that he was	14:46:35
16	A. Yes.	14:43:18	16	going to have documents assembled, and either Kevin was	14:46:42
17	Q. It's dated 7-19-06, 9:00 a.m.?	14:43:18	17	working on that or Kevin would work on that. That's my	14:46:46
18	A. Yes.	14:43:21	18	best recollection.	14:46:50
19	Q. And what's the 9:40? Is that the ending of	14:43:22	19	Q. And is he a City Attorney or a paralegal or	14:46:51
20	the conversation?	14:43:26	20	what?	14:46:55
21	A. Yes.	14:43:26	21	A. To the best of my knowledge, I think he's an	14:46:55
22	Q. And this was on phone or in person?	14:43:26	22	investigator.	14:46:58
23	A. This would have been on the phone.	14:43:30	23	Q. What kind of documents were you getting from	14:46:59
24	Q. And this is with Mr. Aguirre and	14:43:41	24	the investigator?	14:47:05
25	Mr. Esuchanko?	14:43:52	25	A. Well, the documents that this is referring to	14:47:06
		102			104
1	A. Yes.	14:43:52	1	are the ones that we already referenced. Oh, I see it's	14:47:21
2	Q. And was this a three-way, or was Mr. Esuchanko	14:43:52	2	earlier in this tab. The -- this conversation took	14:47:37
3	with Mr. Aguirre?	14:43:55	3	place on July 19th. The documents that are -- that	14:47:43
4	A. I believe that Mr. Esuchanko was in his home	14:43:56	4	Mr. Aguirre was referring to are the ones that showed up	14:47:47
5	state at the time.	14:44:06	5	on July 26th with -- in connection with this letter.	14:47:50
6	Q. So it was a three-way --	14:44:07	6	Q. Uh-huh. Okay. And -- and an investigator was	14:47:54
7	A. Yes.	14:44:09	7	involved in giving those to you?	14:48:00
8	Q. -- conversation?	14:44:09	8	A. I don't know whether -- first of all, I don't	14:48:01
9	A. Yes.	14:44:10	9	recall whether or not this is Kevin Christiansen or not.	14:48:11
10	Q. And the first line says what?	14:44:10	10	I didn't meet Kevin until September. So I wouldn't have	14:48:14
11	A. "Needs 6-30-03 City numbers, KPMG."	14:44:11	11	-- would have no idea who Mr. Aguirre was referring to.	14:48:17
12	Q. What does that mean?	14:44:22	12	Q. And when you met Kevin, in what connection was	14:48:21
13	A. I think it's a reference to the fact that the	14:44:23	13	that?	14:48:23
14	audit that KPMG was doing was still in progress for	14:44:29	14	A. He was in one of the meetings for a short	14:48:23
15	June 30th, '03.	14:44:33	15	period of time.	14:48:31
16	Q. And did you use the audit figures in your	14:44:35	16	Q. Did he have any role in connection with your	14:48:31
17	calculations?	14:44:41	17	work?	14:48:35
18	A. No.	14:44:42	18	A. No.	14:48:39
19	Q. And so what was the significance of the audit	14:44:44	19	Q. Do you know what he was doing in the case?	14:48:36
20	to your work?	14:44:51	20	A. No.	14:48:39
21	A. Actually, the audit of -- done by KPMG has not	14:44:51	21	Q. It says fundamentals; is that right?	14:48:39
22	been issued yet. So it's had no significant --	14:45:10	22	A. Right.	14:48:45
23	significance on my work.	14:45:12	23	Q. And then what does it say?	14:48:46
24	Q. So who needed this -- the City numbers from	14:45:13	24	A. "Help jury understand info that is expert in	14:48:47
25	the KPMG audit?	14:45:18	25	nature and to make decisions."	14:48:51
		103			105

1	<b>Q. And what decisions was that referring to?</b>	14:48:52	1 meetings.	14:51:42
2	A. This was a general discussion that Mr. Aguirre	14:48:55	2 MR. CHUNG: Counsel, can we take a five-minute	14:51:43
3	had with Mr. Esuchanko and myself, which was generic in	14:49:01	3 break? I need to use the restroom.	14:51:46
4	nature about expert witness work. It wasn't	14:49:06	4 MR. KLEVENS: Okay.	14:51:48
5	specifically related to this case.	14:49:10	5 THE VIDEOGRAPHER: We are off the record. The	14:51:49
6	<b>Q. But it makes reference to decisions concerning</b>	14:49:12	6 time is 2:58 p.m.	14:51:50
7	<b>accounting and an actuary, right? What does that?</b>	14:49:16	7 (Recess taken.)	14:51:57
8	A. It does there.	14:49:18	8 THE VIDEOGRAPHER: We are back on the record.	14:57:31
9	<b>Q. What is that about?</b>	14:49:19	9 The time is 2:56 p.m.	14:57:50
10	A. That would be references to this case. In	14:49:20	10 BY MR. KLEVENS:	14:57:52
11	other words, generic descriptions of decisions to be	14:49:24	11 <b>Q. Mr. Gabrielson, we're looking at your notes.</b>	14:57:53
12	made in this case.	14:49:26	12 <b>We're at Page 6 of your notes that's 6-29-2000, correct?</b>	14:57:55
13	<b>Q. What decisions?</b>	14:49:29	13 A. Correct.	14:58:00
14	A. Decisions by the jury.	14:49:30	14 <b>Q. What occurred on that date?</b>	14:58:01
15	<b>Q. Decisions?</b>	14:49:33	15 A. June 29th, 2006 was a day that I traveled to	14:58:06
16	A. Or trier of fact.	14:49:36	16 San Diego. And I believe that these were notes that I	14:58:44
17	<b>Q. Decisions by the trier of fact about what?</b>	14:49:37	17 made while I was waiting to meet with some of the City	14:58:59
18	A. About the issues in the case.	14:49:39	18 staff. But that didn't actually occur. And I ended up	14:59:18
19	<b>Q. But specifically what was being referred to</b>	14:49:42	19 attending the deposition of Mr. Kelly, the former labor	14:59:24
20	<b>here?</b>	14:49:45	20 relations manager for the City of San Diego. And then I	14:59:28
21	A. There wasn't any list of specifically what are	14:49:45	21 stayed and attended the evening presentation at City	14:59:30
22	we referring to here. This was a generic discussion	14:49:50	22 Hall, which I referred to earlier, the one where I	14:59:35
23	about the role of an expert to -- to provide information	14:49:52	23 received a copy of the tape later. It was a community	14:59:39
24	and testimony that would be helpful to the trier of	14:50:01	24 forum presentation.	14:59:41
25	fact, whether a judge or a jury, in making the decisions	14:50:04	25 <b>Q. So you were summarizing the documents that you</b>	14:59:43
		106		108
1	that the trier of fact has to make in a case.	14:50:07	1 had?	14:59:50
2	<b>Q. And then what does it say, "two ways" what?</b>	14:50:09	2 A. The -- the meaningful information on this page	14:59:51
3	A. This again is generic. The thought here being	14:50:14	3 that I can recall, yes. That was the list of the	14:59:56
4	there are two ways to assist the trier of fact. One is	14:50:23	4 financial statements that I had been provided at that	15:00:01
5	to -- and it says "educate the jury as to how to	14:50:28	5 point. That was on June 29th.	15:00:05
6	evaluate" or Number 2, "help them make the decision."	14:50:31	6 <b>Q. And -- and you also had eight interim reports</b>	15:00:06
7	<b>Q. And what's the reference to the verdict form</b>	14:50:37	7 <b>from Mr. Aguirre?</b>	15:00:16
8	<b>and jury instructions?</b>	14:50:43	8 A. I did not have those reports at that point. I	15:00:17
9	A. That would be a generic reference to if you're	14:50:44	9 believe I made a -- I believe the implication of my note	15:00:26
10	testifying in front of a jury, that your testimony needs	14:50:49	10 here is that I wanted to get copies of those reports.	15:00:30
11	to be related to the issues that the jury's trying to	14:50:57	11 But I did not have those at that time.	15:00:35
12	decide. And the place to find out what the jury's	14:51:04	12 <b>Q. Did you get them?</b>	15:00:37
13	trying to decide is by looking at the verdict forms and	14:51:10	13 A. As best I recall, I got copies of the first	15:00:41
14	jury instructions.	14:51:13	14 six. And Report Number 12. And all of the reports I	15:00:44
15	<b>Q. And then Page 5 is a listing of the two -- two</b>	14:51:14	15 found out later are on -- they're accessible on the web.	15:00:49
16	<b>prior City managers; is that right?</b>	14:51:22	16 So I didn't ask for any more copies.	15:00:56
17	A. Correct.	14:51:23	17 <b>Q. Have you reviewed all these reports?</b>	15:00:58
18	<b>Q. And that was information supplied by</b>	14:51:24	18 A. I've reviewed parts of the first six. And I	15:01:01
19	<b>Mr. Aguirre?</b>	14:51:27	19 reviewed the 12th.	15:01:04
20	A. I don't believe that that was part of this	14:51:28	20 <b>Q. What was the 12th one?</b>	15:01:08
21	conversation.	14:51:30	21 A. The 12th is in this binder.	15:01:11
22	<b>Q. I see. This was information you got along the</b>	14:51:31	22 <b>Q. Okay.</b>	15:01:19
23	<b>way?</b>	14:51:35	23 A. It's going to be Tab 17. It's the purchase of	15:01:20
24	A. I think these were notes that I made at a	14:51:37	24 service credits.	15:01:22
25	point in time not involved with any phone calls or	14:51:39	25 <b>Q. Okay.</b>	15:01:23
		107		109

1	A. And when I say "this binder," for the record	15:01:27	1 Chung. The first notation is Cheiron, which would be	15:05:04
2	it's Exhibit 602.	15:01:29	2 the actuary for the City at this point. NPO would	15:05:10
3	<b>Q. Right. Now, we're looking at Page 7; is that</b>	15:01:31	3 talk -- would refer to the net pension obligation. And	15:05:22
4	<b>right?</b>	15:01:36	4 there's the word "DROPS," which would relate to the	15:05:25
5	A. Yes.	15:01:36	5 Deferred Retirement Option Plan. And then it says	15:05:30
6	<b>Q. Those are notes that you took on October 4th,</b>	15:01:39	6 something about Joe's version of blank. And then it	15:05:33
7	<b>2006; is that right?</b>	15:01:42	7 talks about "13th." So that would be 13th Check.	15:05:40
8	A. Yes.	15:01:43	8 "Disability" would be disability benefits. "Purchase of	15:05:46
9	<b>Q. And then those are in a conversation with</b>	15:01:44	9 service credits, disability offset." And then it	15:05:49
10	<b>Mr. Chung?</b>	15:01:47	10 says --	15:05:54
11	A. Yes.	15:01:48	11 <b>Q. What's the significance of that list?</b>	15:05:54
12	<b>Q. Or a meeting?</b>	15:01:48	12 A. Those would be elements of -- of -- that are	15:05:56
13	A. As best I recall, this would be a phone	15:01:49	13 set forth under Tab 11 of Exhibit 602 in terms of	15:06:04
14	conversation.	15:02:13	14 different benefits that have been analyzed actuarially.	15:06:10
15	<b>Q. And so what did Mr. Chung tell you?</b>	15:02:19	15 Then the next section says "Joe." Appears to be	15:06:21
16	A. Well, the first line says Joe was back.	15:02:24	16 shorthand for accumulated inadequate contributions. And	15:06:23
17	Which, to the best of my recollection, indicates that	15:02:27	17 the second one says "DROP."	15:06:27
18	Mr. Esuchanko had returned to San Diego.	15:02:31	18 <b>Q. Then what about Page 9, when were those notes</b>	15:06:35
19	<b>Q. And how did his work relate to yours?</b>	15:02:38	19 taken?	15:06:40
20	A. His work related to mine in that the actuarial	15:02:39	20 A. I don't know. This page isn't dated.	15:06:40
21	calculations that are reflected under Tab 11 were done	15:02:50	21 <b>Q. What do the notes concern?</b>	15:06:52
22	by him.	15:02:55	22 A. First of all, at the top of the page it says	15:06:54
23	<b>Q. And you used those?</b>	15:02:55	23 "KPMG audit." The next section says "2.5 billion	15:06:57
24	A. I did.	15:03:00	24 deficit Towers Perrin."	15:07:03
25	<b>Q. And then what else in the notes, Page 7?</b>	15:03:00	25 <b>Q. What's that refer to?</b>	15:07:05

110

112

1	A. Well, it says "4:00 Friday numbers." At this	15:03:11	1 A. I believe that refers to a study that was done	15:07:06
2	point I don't recall exactly what that is. It says	15:03:16	2 by Towers Parrin regarding the City's unfunded health	15:07:10
3	"conference call." I don't recall exactly what that is	15:03:21	3 benefits for retirees. Then there's a list that says	15:07:16
4	either. There's something about dedesignating two	15:03:23	4 "Corbett 2000," meaning Corbett was a case in the year	15:07:25
5	people, Ferenczy. There's actually three people listed	15:03:30	5 2000. Gleason, a 2004 case. "Actuarial losses	15:07:28
6	here. Ferenczy, Chadwick and Snapper.	15:03:37	6 underfunding since 1996. 1996 purchase of service	15:07:36
7	<b>Q. Were you told why that was being done?</b>	15:03:41	7 credits. 3,000 employees. 15,000 years of pension	15:07:41
8	A. No.	15:03:43	8 credits." And then it also refers to DROP and MP1 and	15:07:45
9	<b>Q. And then?</b>	15:03:45	9 MP2.	15:07:51
10	A. The next section I believe has to do with my	15:03:45	10 <b>Q. What's the significance of this list?</b>	15:07:53
11	question about how long the trial would likely last.	15:03:51	11 A. As I sit here at the moment, I don't recall.	15:07:56
12	And the answer appears to be that based on Mr. Chung's	15:03:55	12 These are all elements of the case or elements of the	15:08:00
13	best information at the time, that the Phase 1 of the	15:04:02	13 factual situation with the City. But I don't -- I don't	15:08:03
14	trial would be a judge trial focusing on law and motion.	15:04:04	14 know what the significance of this list was.	15:08:06
15	It would last about a week. Phase 2 would be a judge	15:04:10	15 <b>Q. And page -- I think we're up to Page 10, are</b>	15:08:08
16	trial, focusing on the statute, which would last about a	15:04:13	16 we not?	15:08:11
17	week. Phase 3 would be a jury trial, which Mr. Chung	15:04:17	17 A. Page 10 is a tabulation in my handwriting of	15:08:13
18	described as dealing with the nuts and bolts of the	15:04:24	18 the City's total payroll during the time period June	15:08:20
19	case, and would last about four weeks.	15:04:27	19 30th, '88 through June 30th, 2005.	15:08:25
20	<b>Q. Next page. That's Page 8, right?</b>	15:04:28	20 <b>Q. And by "total payroll," you mean what?</b>	15:08:28
21	A. Yes. These are stapled together for some	15:04:40	21 A. Paid --	15:08:30
22	reason. But I think these were probably done at a	15:04:44	22 <b>Q. Total amounts paid to all their public</b>	15:08:35
23	different time. This references October 10th at 4 --	15:04:46	23 employees?	15:08:36
24	4:00 in the afternoon. Appears to be notes of a	15:04:53	24 A. Payroll used for purposes of the annual	15:08:37
25	telephone conversation with Joe Esuchanko and Walter	15:04:58	25 actuarial calculations done by Mr. Roeder and by	15:08:43

111

113

1 Cheiron.	15:08:47	1 the benefit enhancements."	15:12:02
2 Q. So this is not -- this is the payroll as	15:08:48	2 Q. Where did you get that information?	15:12:04
3 opposed to retirement benefits or something like that?	15:08:53	3 A. I was aware of that. I don't know if I became	15:12:06
4 A. Correct. This is the pay -- this is -- this	15:08:56	4 aware of that by reading the documents or by talking to	15:12:13
5 would be the pay of the employees that the benefits are	15:08:58	5 people. Next line says "Corbett." Next line says	15:12:15
6 calculated on.	15:09:02	6 "present unfunded liability." Next line says "Husted	15:12:26
7 Q. And you took these figures from Mr. Roeder's	15:09:02	7 reports."	15:12:29
8 figures; is that right?	15:09:10	8 Q. Are these elements of something where you have	15:12:29
9 A. Actually, the sources are listed at the bottom	15:09:12	9 listed 1 through 6?	15:12:32
10 of the page.	15:09:14	10 A. I couldn't tell you as I sit here right now.	15:12:34
11 Q. They're all from Mr. Roeder except for the	15:09:15	11 I note that the -- this actually appears to be a	15:12:38
12 last one?	15:09:17	12 combination of -- there's two different types of ink on	15:12:41
13 A. Correct.	15:09:17	13 this page. So these notes were done at two different	15:12:45
14 Q. And then what -- in the middle of the page on	15:09:17	14 times. I'm not sure what the significance was as I sit	15:12:54
15 the right there, what are those references in	15:09:22	15 here at the moment.	15:12:59
16 parentheses?	15:09:26	16 Q. That was Page 12. Page 13 begins "Darby	15:13:00
17 A. What it shows is that in the left-hand column	15:09:26	17 case"; is that right?	15:13:06
18 the numbers from 1988 through '96 are from Mr. Roeder's	15:09:36	18 A. Yes.	15:13:06
19 June 30th, '96 valuation. And then when I later looked	15:09:42	19 Q. What's that -- what are these notes for?	15:13:06
20 at the June 30th, 2003 valuation, he had different	15:09:47	20 A. These may have been some notes that I took in	15:13:09
21 numbers from the total payroll for those years. So I	15:09:53	21 connection with reviewing part of the June 29th, 2006	15:13:19
22 simply made a note on the right-hand side of the page as	15:09:56	22 community forum videotape.	15:13:26
23 to what those numbers were that he was saying as of June	15:09:59	23 Q. So these are things that Mr. Aguirre was	15:13:29
24 30th, 2003.	15:10:03	24 talking to the people at the forum about?	15:13:35
25 Q. And did you use these figures in your	15:10:09	25 A. As best I recall, that's true. I say that	15:13:37
	114		116
1 calculations?	15:10:11	1 because I have no recollection at all of anything about	15:13:42
2 A. No.	15:10:12	2 the Darby case or People versus Hoenig. And so my best	15:13:45
3 Q. And next, Page 11. Begins upper left 1996,	15:10:16	3 recollection is that this may have something to do with	15:13:53
4 correct?	15:10:28	4 that particular tape.	15:13:56
5 A. Yes. It's -- in 1996 it says "MPI benefits.	15:10:28	5 Q. And the next page, 14? Is this still part of	15:14:04
6 Purchase of service credits, 13th Check, formula	15:10:35	6 that same forum?	15:14:15
7 increasing, retroactive, and prospective." "DROP" and	15:10:40	7 A. Yes. These are likely notes from that same	15:14:16
8 "industrial disability benefits. Cost of each. How to	15:10:44	8 review of that videotape. As would the next page. I	15:14:29
9 be funded. Undistributed E," would be undistributed	15:10:50	9 think -- it appears to me that there's three pages here	15:14:43
10 earnings. "Et cetera. Question mark. Could take at	15:10:55	10 that are all related to that.	15:14:46
11 retirement, lump." Oh, this is an explanation of the	15:11:01	11 Q. Did you use any of this in your analysis?	15:14:57
12 DROP plan. There's a footnote at the bottom that says	15:11:05	12 A. This would again just be general background	15:15:38
13 "at retirement age stay in job dollars went into	15:11:08	13 information.	15:15:41
14 SDCERS." Something "at 8 percent interest. They	15:11:14	14 Q. And then page beginning "benefits" at the top,	15:15:43
15 contribute 3 percent and City would match. Also got	15:11:21	15 that's Page 16?	15:15:54
16 COLAs," which would be cost of living allowances. Then	15:11:25	16 A. Okay.	15:16:12
17 there's a note that -- that I reference up above that	15:11:28	17 Q. What are those notes?	15:16:13
18 says "Could take at retirement a lump sum and annuity or	15:11:31	18 A. It says "Benefits. June 7th, 1996, listing of	15:16:17
19 combination of lump sum and annuity."	15:11:37	19 benefits. November 18th, listing of benefits. 2002,	15:16:20
20 Q. So that was a description of what you	15:11:39	20 202.5 plus. All November 18th benefits plus presidential	15:16:27
21 understood the DROP plan characteristics to be?	15:11:41	21 benefit. Understand."	15:16:31
22 A. Yes.	15:11:43	22 Q. What's this about?	15:16:32
23 Q. And the next page?	15:11:45	23 A. I don't have any independent recollection of	15:16:33
24 A. It says. "What was the rate stabilization plan	15:11:49	24 why these notes were made or under what -- in what	15:16:37
25 in 1996? MPI, MP2. Certain board members benefitted by	15:11:56	25 context they were made.	15:16:40
	115		117

1 Q. And the next, Page 17, is your notes during	15:16:41	1 Q. And February 25th is what?	15:19:12
2 Mr. Husted's deposition?	15:16:43	2 A. "Change Muni Code to do MP1."	15:19:15
3 A. Yes.	15:16:45	3 Q. March 4, 1997, that's the DROP; is that right?	15:19:19
4 Q. What does it say?	15:16:48	4 A. Correct.	15:19:25
5 A. It says "A 1 percent change in interest rate	15:16:49	5 Q. Now, when DROP was adopted, it was a temporary	15:19:26
6 can mean an increase in cost of 20 percent."	15:16:51	6 plan; is that right?	15:19:28
7 Q. What interest rate?	15:16:55	7 A. At the moment I don't recall.	15:19:29
8 A. The interest rate in this context I believe	15:16:56	8 Q. Didn't -- wasn't it initially a temporary	15:19:32
9 would be comparable to the 8 percent interest rate	15:17:03	9 plan, and then it became a permanent plan?	15:19:35
10 that's used in calculating -- in doing the actuarial	15:17:08	10 A. I don't recall.	15:19:38
11 calculations for the retirement plan.	15:17:11	11 Q. And March 31?	15:19:39
12 Q. It's the assumed rate of return?	15:17:13	12 A. Says "clean up mistakes."	15:19:44
13 A. Yes.	15:17:17	13 Q. What does that refer to?	15:19:45
14 Q. And so is this suggesting if the assumed rate	15:17:18	14 A. The best of my recollection, that would mean	15:19:46
15 of return goes up by 1 percent, that it can increase the	15:17:27	15 that on March 31, 1997 the City Council adopted	15:19:50
16 cost by 20 percent?	15:17:31	16 ordinances and resolutions to clean up mistakes in the	15:19:57
17 A. That's what Mr. Husted testified to, as best I	15:17:32	17 previous ordinances and resolutions related to MP1.	15:20:01
18 understood it at the time I made this note.	15:17:35	18 Q. And then the list continues on the next three	15:20:06
19 Q. And the next page, that's Page 18, I believe.	15:17:39	19 pages; is that true?	15:20:08
20 Begins "SDCERS meeting," correct?	15:17:46	20 A. Yes.	15:20:09
21 A. Yes.	15:17:48	21 Q. So -- and now you're talking about 2002?	15:20:10
22 Q. What's this about?	15:17:49	22 A. Correct.	15:20:15
23 A. As I sit here at the moment, I don't exactly	15:17:51	23 Q. And the first date is March 18, "seven years	15:20:15
24 know. These appear to be some key dates in the	15:17:55	24 of underfunding"?	15:20:19
25 chronology of the documents.	15:17:59	25 A. Correct.	15:20:21

118

120

1 Q. These are key dates that you derived or	15:18:01	1 Q. April 29, "all enhancements conditional"?	15:20:21
2 someone told you?	15:18:04	2 A. Correct.	15:20:24
3 A. As I sit here at the moment, I don't recall.	15:18:04	3 Q. May 6th, "presidential benefit for Saathoff	15:20:24
4 Q. And the next page has 96 on the left with a	15:18:08	4 approved"?	15:20:31
5 line under it, correct?	15:18:17	5 A. Correct.	15:20:32
6 A. Yes.	15:18:18	6 Q. And then May 13 says what?	15:20:33
7 Q. And the first date is May 2, 1996, concept	15:18:19	7 A. "MEA 127 and Firefighters told of benefits and	15:20:42
8 overview?	15:18:24	8 contributions deal."	15:20:52
9 A. Right.	15:18:24	9 Q. Now, as of that date there was no agreement	15:21:02
10 Q. And what is this list?	15:18:25	10 from the SDCERS board to provide any contribution change	15:21:06
11 A. This appears to be another listing of key	15:18:26	11 from MP1, correct?	15:21:10
12 dates of some sort.	15:18:29	12 A. That's my best recollection.	15:21:12
13 Q. Supplied, or you derived?	15:18:30	13 Q. And so at that point the presidential benefit	15:21:13
14 A. As I sit here at the moment, I don't recall	15:18:32	14 for Mr. Saathoff had already been approved, according to	15:21:20
15 whether I created this or somebody else -- well, it's my	15:18:36	15 your notes?	15:21:22
16 handwriting. I don't recall what the genesis of this	15:18:44	16 A. According to these notes, yes.	15:21:23
17 is.	15:18:49	17 Q. Do you have any reason to believe they're not	15:21:25
18 Q. And the July 20, is that July 23 or July 27 in	15:18:49	18 accurate?	15:21:26
19 the middle of the page?	15:18:55	19 A. No.	15:21:27
20 A. Appears to be July -- oh, that's a good	15:18:56	20 Q. Then May 29, "City manager proposes MP1	15:21:28
21 question.	15:19:00	21 modification"; is that right?	15:21:38
22 Q. What does it say?	15:19:02	22 A. Correct.	15:21:39
23 A. It says "Lexin summarizes MP1."	15:19:03	23 Q. And then what's June 14th say?	15:21:39
24 Q. Okay. September 19th is "fiduciary letter"?	15:19:07	24 A. "City Council authorizes City manager to go	15:21:41
25 A. Yes.	15:19:12	25 from .50 percent to 1.0 percent per year."	15:21:47

119

121

1 Q. That's an increase in the contributions that	15:21:52	1 Q. Uh-huh. And then November 15?	15:24:21
2 the City makes?	15:21:54	2 A. "SDCERS approves MP2 funding again."	15:24:26
3 A. Correct.	15:21:55	3 Q. That refers now to the satisfaction of the	15:24:30
4 Q. And then June 21?	15:21:55	4 three contingencies or conditions that had been imposed	15:24:35
5 A. "SDCERS considers proposal of MP2."	15:21:58	5 back on July 11th, correct?	15:24:38
6 Q. July 1?	15:22:03	6 A. I believe so.	15:24:40
7 A. "MEA adopts MP2 subject to Retirement Board	15:22:04	7 Q. Then November 18th?	15:24:42
8 approval."	15:22:14	8 A. "City Council approves future union	15:24:44
9 Q. What does that mean, "MEA adopts MP2"? What's	15:22:14	9 presidents' deal."	15:24:47
10 that based on?	15:22:22	10 Q. That refers to the incumbent presidents'	15:24:47
11 A. I could look at some documents and see if I	15:22:23	11 benefit?	15:24:54
12 could zero in on that, if you want me to.	15:22:30	12 A. I believe so.	15:24:54
13 Q. Well, it depends how long you're going to	15:22:31	13 Q. Well, who approved it on May the 6th? That	15:24:57
14 spend at it. Let's keep going for the time being.	15:22:34	14 was the City Council also, right?	15:25:19
15 A. Okay.	15:22:38	15 A. To the best of my recollection.	15:25:20
16 Q. July 8th?	15:22:38	16 Q. And the last reference?	15:25:23
17 A. "City Council modification of modification."	15:22:39	17 A. "November 18th. City Council purchase of	15:25:31
18 Q. Modification of modification?	15:22:44	18 service ten-year vesting. City Council adopts benefits	15:25:37
19 A. Right.	15:22:52	19 for Firefighters. City Council adopts indemnification	15:25:42
20 Q. What does that refer to?	15:22:52	20 for board members."	15:25:48
21 A. Well, I think it refers to the fact that MP2	15:22:53	21 Q. Now, those are all the notes you've taken in	15:25:50
22 went through an evolutionary process, and it was	15:22:59	22 connection with this assignment?	15:25:55
23 modified, and then the modification was modified.	15:23:04	23 A. Yes.	15:25:56
24 Q. And then July 11th?	15:23:07	24 Q. Now, would you turn to Tab 11. Exhibit 602-A.	15:25:56
25 A. "SDCERS approves modification of	15:23:08	25 A. Certainly. Counsel, would you mind if we took	15:26:06
122		124	
1 modification."	15:23:11	1 just about a three-minute break for restroom.	15:26:09
2 Q. But that was the approval that you testified	15:23:12	2 Q. Okay.	15:26:12
3 about earlier that was subject to three conditions, and	15:23:14	3 THE VIDEOGRAPHER: We are off the record.	15:26:13
4 then the three conditions weren't satisfied until	15:23:18	4 This concludes Tape 2 of the deposition. The time is	15:26:15
5 November 15th, correct?	15:23:21	5 3:24 p.m.	15:26:18
6 A. As best I recall.	15:23:21	6 (Recess taken.)	15:26:21
7 Q. And that's what's reflected in your notes,	15:23:23	7 THE VIDEOGRAPHER: We are back on the record.	15:30:07
8 right?	15:23:26	8 The time is 3:28. This begins Tape 3.	15:30:14
9 A. As best I recall, yes.	15:23:26	9 BY MR. KLEVENS:	15:30:22
10 Q. And then July 12th, what does that say?	15:23:28	10 Q. You said you wanted to change something?	15:30:23
11 A. "MEA says Uberuaga contingency met."	15:23:32	11 A. Yes. I want to correct the last answer. Your	15:30:25
12 Q. And October 21?	15:23:41	12 question was are these all the notes that I've taken.	15:30:27
13 A. "City Council adopts presidential leave."	15:23:43	13 The more accurate answer is these are the notes that	15:30:29
14 Q. Now, does that refer to the incumbent	15:23:46	14 I've taken on separate sheets of paper. I have other	15:30:31
15 presidents' benefit or presidential leave?	15:23:50	15 notes that I have made in the case. And they are on the	15:30:38
16 A. Well, the words that I have here say	15:23:52	16 documents themselves.	15:30:41
17 presidential leave.	15:23:55	17 Q. And those -- we'd have to go through all 25	15:30:42
18 Q. And that's what occurred on October 21 by	15:23:56	18 binders to find them?	15:30:47
19 ordinance; isn't that right?	15:23:58	19 A. Yes. And as you've seen, I also have	15:30:48
20 A. As best I recall.	15:23:59	20 highlighted numerous places with a yellow marker.	15:30:55
21 Q. What's October 21 below that? What does that	15:24:00	21 Q. Let's turn to Tab 11 of Exhibit 602-A. That's	15:30:58
22 say?	15:24:11	22 your -- is that the only page that would constitute your	15:31:05
23 A. It says "2.5 percent increase in."	15:24:12	23 own -- is that the only tab that would contain your own	15:31:15
24 Q. General member?	15:24:19	24 calculations in connection with your assignment in this	15:31:20
25 A. "General member formula."	15:24:20	25 case so far?	15:31:23
123		125	



1 A. Yes. This would be a summary of my	15:31:23	1 finished except for testifying about it?	15:34:31
2 conclusions about these numbers.	15:31:25	2 A. It's always possible that I'll be asked to do	15:34:33
3 Q. And what -- what are you calculating on the	15:31:27	3 further work. But I'm not planning to do any further	15:34:39
4 first page of Tab 11?	15:31:32	4 work at this time.	15:34:41
5 A. First page of Tab 11 shows amounts calculated	15:31:34	5 Q. You haven't been told that there's any further	15:34:42
6 in connection with 12 different items that are listed on	15:31:41	6 work to be done?	15:34:44
7 that particular page.	15:31:48	7 A. No.	15:34:45
8 Q. What are you calculating?	15:31:50	8 Q. So you -- so you -- your -- your	15:34:45
9 A. Well, for example, the cost in millions of	15:31:52	9 calculations -- your work in connection with damages in	15:34:51
10 dollars of the service retirement factor in connection	15:32:00	10 Tab 11 consisted of just pulling these numbers out of	15:34:55
11 with MP1 was \$159 million. In other words, if you	15:32:04	11 Mr. Esuchanko's calculations that were made, so far as	15:34:58
12 looked at the 1 million -- 1.394 billion unfunded	15:32:12	12 you could tell, after his deposition; is that right?	15:35:02
13 actuarial accrued liability at June 30th, 2005, 159	15:32:20	13 MR. CHUNG: Objection; misstates the witness's	15:35:04
14 million of that relates to the increase in the service	15:32:25	14 testimony as to the word "damages."	15:35:06
15 retirement factor.	15:32:29	15 THE WITNESS: These numbers were derived from	15:35:10
16 Q. And do you have documents that show how you	15:32:31	16 the calculations that he did, which are on the 15-page	15:35:12
17 calculated that?	15:32:39	17 document that is the second part of Tab 11. And that is	15:35:17
18 A. Those numbers were calculated by	15:32:39	18 the source of the numbers.	15:35:20
19 Mr. Esuchanko.	15:32:41	19 BY MR. KLEVENS:	15:35:22
20 Q. And do you have documents that show how	15:32:42	20 Q. And you did no other calculations yourself?	15:35:22
21 Mr. Esuchanko calculated it?	15:32:49	21 A. No.	15:35:26
22 A. I don't have -- what I have from him is the	15:32:50	22 Q. And have you done any other calculations that	15:35:26
23 15-page summary, which is the second part of Tab 11,	15:32:57	23 would correspond to any costs of the increased	15:35:30
24 which explains the -- in general terms the numbers that	15:33:01	24 retirement benefits?	15:35:36
25 were calculated and the background information. I don't	15:33:06	25 A. No.	15:35:37
	126		128
1 have the -- I don't have the detailed calculations that	15:33:09	1 Q. And these -- these calculations made by	15:35:37
2 he made.	15:33:11	2 Mr. Esuchanko purport to be the cost of the various	15:35:42
3 Q. And these are the calculations that you	15:33:12	3 retirement benefits?	15:35:45
4 referred to earlier that had not been made at the time	15:33:14	4 A. Yes.	15:35:45
5 of his deposition and were made afterward?	15:33:17	5 Q. And do you know how they were calculated?	15:35:46
6 MR. CHUNG: Objection; lacks foundation. I	15:33:19	6 A. In general terms, the way that they were	15:35:53
7 don't believe he's ever testified to that.	15:33:21	7 calculated is explained in his document. As far as the	15:35:58
8 MR. KLEVENS: I think he did. But I'm just	15:33:23	8 detailed formulas that were used, I don't have that.	15:36:02
9 trying to find out if these are the calculations that he	15:33:25	9 MR. CHUNG: I would just add that to the	15:36:37
10 referred to earlier.	15:33:28	10 extent that any of the parties wanted to redepose	15:36:40
11 THE WITNESS: I don't know when they were	15:33:29	11 Mr. Esuchanko on this limited subject, the City would	15:36:43
12 done. But I don't believe that Mr. Esuchanko testified	15:33:30	12 make him available.	15:36:44
13 to these numbers at his deposition.	15:33:33	13 MR. LEONE: Well, that's mighty nice of you.	15:36:49
14 BY MR. KLEVENS:	15:33:35	14 MR. CHUNG: I'm just here to help.	15:36:50
15 Q. So these figures are all figures that	15:33:54	15 MR. KLEVENS: You know, that doesn't really	15:36:51
16 Mr. Esuchanko calculated? You did not calculate them?	15:33:57	16 solve a problem with the trial set next week.	15:36:52
17 A. Correct.	15:33:59	17 Mr. Esuchanko's job was -- and the representation with	15:36:56
18 Q. And are these the supposed damage figures that	15:34:00	18 respect to his deposition was that he would be prepared	15:37:00
19 the City is seeking to recover?	15:34:03	19 to testify regarding the opinions he was going to give	15:37:02
20 A. These particular line items may or may not be	15:34:05	20 at trial. And -- and he testified that he had testified	15:37:05
21 part of the damages. I've been asked to separate out	15:34:12	21 about all the opinions he was going to give at trial.	15:37:09
22 those numbers. And I believe that's part of the Court's	15:34:17	22 And he testified that there was no further work to be	15:37:11
23 decision as to what's damages and what isn't.	15:34:22	23 done. So that's the state of the record.	15:37:13
24 Q. Well, are you -- are you planning to do	15:34:25	24 BY MR. KLEVENS:	15:37:20
25 additional work that you haven't done, or is your work	15:34:28	25 Q. Mr. Gabrielson, so with respect to this	15:37:21
	127		129

1 service retirement factor, does the \$159 million reflect	15:37:25	1 Q. No. I'll just tell you. Did Mr. Esuchanko	15:41:51
2 in any way the increased contributions made by the	15:37:35	2 indicate that the purchase of service credits were	15:41:54
3 employees in connection with their increased retirement	15:37:39	3 purchased at a discount?	15:41:57
4 factor?	15:37:45	4 A. On this page?	15:41:58
5 A. This would be the portion of the City's	15:37:45	5 Q. Yes. Or somewhere else.	15:42:00
6 unfunded actuarial accrued liability of 1.394 million.	15:37:50	6 A. I know that he believes and knows that they	15:42:03
7 So the 159- relates to the City's increased liability in	15:37:54	7 were purchased at a discount. I've discussed it with	15:42:07
8 connection with MP1.	15:37:59	8 him.	15:42:09
9 Q. But doesn't have -- it doesn't have anything	15:38:01	9 Q. All right. Did he indicate it in his report?	15:42:10
10 to do with reflecting in any way the contributions by	15:38:04	10 A. I believe he does in the line that says "the	15:42:12
11 the employees; is that right?	15:38:10	11 purchase of service credit plan was not cost neutral."	15:42:36
12 A. I don't believe so.	15:38:11	12 Q. That's it?	15:42:39
13 Q. And what -- what's the 20 percent disability	15:38:13	13 A. I believe he indicates in line 11 that these	15:42:42
14 offset? And -- and I take it -- strike that.	15:38:22	14 purchases were permissive and they already cost the	15:42:58
15 One question at a time. What's the 20 percent	15:38:25	15 system \$103 million.	15:43:02
16 disability offset?	15:38:28	16 Q. What was the discount?	15:43:07
17 A. 20 percent disability offset is a -- one of	15:38:29	17 A. What was the discount?	15:43:08
18 the benefits under MP1. It's described on Page 9 of	15:38:34	18 Q. Yeah.	15:43:09
19 Mr. Esuchanko's 15-page document.	15:38:39	19 A. It's described in great detail in Interim	15:43:10
20 Q. And the disability factor increase?	15:38:44	20 Report Number 12. It's the fact that these purchase of	15:43:14
21 A. It's described on Page 10 of Mr. Esuchanko's	15:39:29	21 service credits were sold at prices which were not	15:43:19
22 documents. An increase in the disability factor from	15:39:32	22 calibrated to the age of the person. So an older person	15:43:24
23 33-1/3 percent to 50 percent.	15:39:36	23 could purchase these at the same amount of money as a	15:43:29
24 Q. And purchase of service credits?	15:39:40	24 younger person. And, therefore, the money wasn't in the	15:43:37
25 A. Purchase of service credits is described on	15:39:51	25 system long enough to earn the return that it needed to	15:43:39
	130		132
1 Page 11. Mr. Esuchanko's document.	15:39:54	1 earn.	15:43:44
2 Q. And the individual members who took advantage	15:39:56	2 Q. Is that the extent of the discount?	15:43:44
3 of this benefit had to pay money into the system; is	15:40:25	3 A. In general terms.	15:43:58
4 that correct?	15:40:27	4 Q. The individuals that participated in the plan	15:44:04
5 A. Yes.	15:40:27	5 paid money into the City, did they not?	15:44:13
6 Q. And do you know why there would be losses	15:40:30	6 A. They did.	15:44:14
7 associated with this program?	15:40:49	7 Q. If this plan were abrogated, the City would	15:44:15
8 A. I sure do.	15:40:49	8 owe the people the money back; is that right?	15:44:21
9 Q. What's the reason?	15:40:52	9 MR. CHUNG: Objection; calls for a legal	15:44:23
10 A. Well, they're described in Interim Report	15:40:53	10 conclusion.	15:44:24
11 Number 12 by the City Attorney. The service credits	15:40:56	11 THE WITNESS: I don't know.	15:44:25
12 were purchased at a discount.	15:41:00	12 BY MR. KLEVENS:	15:44:27
13 Q. Discount from what?	15:41:03	13 Q. Have you taken into account in any of your	15:44:27
14 A. From what their value would be if the	15:41:04	14 calculations the amount the City would have to pay back	15:44:29
15 employees purchasing them paid the full value.	15:41:09	15 to individuals that contributed to the purchase -- who	15:44:33
16 Q. Does Mr. Esuchanko indicate that?	15:41:14	16 contributed money to buy service credits?	15:44:38
17 A. That they were purchased at a discount?	15:41:16	17 A. No.	15:44:40
18 Q. Yes.	15:41:22	18 Q. And where is the basis for the \$36.6 million	15:44:40
19 A. He indicates that the -- that the general	15:41:23	19 cost for the DROP program?	15:44:53
20 direction for this program was to be cost neutral. But	15:41:31	20 A. It's described on Page 13 of Mr. Esuchanko's	15:44:56
21 obviously it wasn't cost neutral, otherwise there	15:41:35	21 report.	15:45:05
22 wouldn't be a \$110.8 million factor calculated here in	15:41:38	22 Q. This is, again, Mr. Esuchanko's work, not	15:45:06
23 connection with MP1.	15:41:44	23 yours, right?	15:45:36
24 Q. I know. What's the answer to my question?	15:41:45	24 A. Correct.	15:45:36
25 A. Could I have it read back.	15:41:48	25 Q. And he indicates the DROP was first	15:45:37
	131		133

1 implemented on a three-year trial basis, but was later	15:45:41	1 A. Correct.	15:48:16
2 approved to be included with other plan provisions.	15:45:44	2 Q. That's a complicated business, isn't it?	15:48:17
3 A. Correct.	15:45:47	3 A. Correct.	15:48:19
4 Q. And that was before MP2, wasn't it?	15:45:48	4 Q. And you don't know whether he screwed it up or	15:48:20
5 A. I believe so.	15:45:51	5 not, do you?	15:48:22
6 Q. Do you have any idea how he calculated this	15:45:53	6 A. Beyond what I've testified to already, no.	15:48:23
7 amount?	15:46:17	7 Q. And was there a study out of the -- out of the	15:48:26
8 A. The terms of the actual formulas used?	15:46:17	8 City that indicated that the City had actually made	15:48:35
9 Q. Yes.	15:46:24	9 money on the DROP program?	15:48:37
10 A. Beyond what's stated on this page?	15:46:25	10 A. I don't know one way or the other.	15:48:39
11 Q. Yes.	15:46:27	11 Q. Nobody's supplied that to you?	15:48:42
12 A. No.	15:46:27	12 A. No.	15:48:44
13 Q. You don't know if this \$36.6 million figure is	15:46:28	13 Q. If it exists?	15:48:45
14 accurate or not, correct?	15:46:50	14 A. No. I haven't seen it.	15:48:47
15 A. I believe it's accurate based on the	15:46:54	15 Q. Would you answer the same way if it was a	15:48:49
16 assumptions that were used in calculating it.	15:46:56	16 study out of SDCERS and not the City? In other words,	15:49:03
17 Q. But you don't know that the calculation is	15:46:57	17 you don't know about that either if it exists?	15:49:10
18 correct, right?	15:46:59	18 A. Correct.	15:49:13
19 A. I haven't reproduced the calculation.	15:46:59	19 Q. And the 13th Check, is that described by	15:49:13
20 Q. So what's the answer to my question? Do you	15:47:01	20 Mr. Esuchanko somewhere?	15:49:23
21 know it's accurate, or not?	15:47:03	21 A. It is.	15:49:24
22 A. I haven't reproduced the calculation.	15:47:04	22 Q. Where is that?	15:49:37
23 Q. So what is the answer to my question, sir? Do	15:47:12	23 A. That's described on Page 12. And also brings	15:49:38
24 you know whether it is accurate?	15:47:15	24 up the issue of excess earnings, which is dealt with in	15:49:46
25 A. I believe it's accurate based on the	15:47:17	25 my binder at -- or surplus earnings at page -- Tab 14.	15:49:49
	134		136
1 assumptions that are reflected here.	15:47:19	1 Q. What's Tab 14?	15:49:59
2 Q. Do you know that it's accurately done?	15:47:21	2 A. Tab 14 is an accumulation of documents as	15:50:00
3 MR. CHUNG: Objection; asked and answered.	15:47:23	3 follows. It's excerpts from the June 30th, 2005	15:50:06
4 BY MR. KLEVENS:	15:47:23	4 actuarial valuation done by Cheiron. Showing on Page 25	15:50:11
5 Q. I'm just asking you a simple question. You	15:47:25	5 that surplus earnings are used in connection with the	15:50:17
6 don't have to dance around it. Just give me an answer	15:47:28	6 items listed on that page, which includes the 13th	15:50:25
7 either "yes" or "no."	15:47:30	7 Check. Excerpts from the deposition of Doug MacCallan	15:50:29
8 MR. CHUNG: He's given you several answers	15:47:31	8 taken on March 30th, 2006. Excerpts from the City's	15:50:35
9 now.	15:47:33	9 unaudited financial statements.	15:50:39
10 BY MR. KLEVENS:	15:47:33	10 Q. Unaudited?	15:50:41
11 Q. Do you know that this is an accurate	15:47:33	11 A. Unaudited financial statements as of	15:50:42
12 calculation, or are you relying that Mr. Esuchanko did	15:47:34	12 June 30th, 2005. Discussing that the conceptual error	15:50:44
13 it right?	15:47:36	13 that surplus earnings are not truly surplus. Pages from	15:50:51
14 A. I rely on Mr. Esuchanko.	15:47:38	14 Mr. Esuchanko's deposition where he discusses this	15:50:57
15 THE VIDEOGRAPHER: Excuse me, sir, you lost	15:47:41	15 concept and is cross-examined by you and Mr. Leone.	15:51:02
16 your mike.	15:47:42	16 Excerpt from a letter to Larry Grissom -- Lawrence	15:51:08
17 MR. KLEVENS: You got to invest in some new	15:47:46	17 Grissom from Franzel and Sherer. SDCO 16060 where he	15:51:19
18 ones.	15:47:51	18 discusses the concept of surplus undistributed earnings	15:51:26
19 BY MR. KLEVENS:	15:48:03	19 and reserves. Excerpts from SDC -- or page that's Bates	15:51:29
20 Q. I mean, Mr. Esuchanko had to figure out what	15:48:04	20 numbered SDCO 16064. And my best recollection is this	15:51:38
21 the cost of the system would have been if people didn't	15:48:08	21 is from one of the summaries. Could be the one done by	15:51:45
22 participate in DROP, right?	15:48:11	22 Kathy Lexin that references surplus undistributed	15:51:57
23 A. Correct.	15:48:12	23 earnings in reserves. First two pages of another letter	15:52:03
24 Q. And compare it to what the cost of the system	15:48:13	24 from Frazel and Sherer to Lawrence Grissom dated	15:52:09
25 was if they did participate in DROP?	15:48:15	25 September 19th, 1996, where surplus undistributed	15:52:14
	135		137

1 earnings are discussed on Pages 1 and 2.	15:52:20	1 A. I believe so.	15:56:09
2 An ad hoc committee report dated April 16th,	15:52:27	2 <b>Q. So you're saying the City Council should make</b>	15:56:20
3 2002. That's from the Retirement Board ad hoc committee	15:52:37	3 <b>a different decision; is that what you're saying?</b>	15:56:28
4 undistributed earnings on discussing the issue of	15:52:41	4 MR. CHUNG: Objection; calls for speculation.	15:56:33
5 undistributed earnings, three pages. Copy of the	15:52:43	5 Calls for a legal conclusion.	15:56:35
6 Municipal code Ordinance 1535 -- 15353. Appears to be	15:52:48	6 THE WITNESS: I'm not giving an opinion as to	15:56:37
7 dated October 1980. Which sets forth the concept of	15:52:58	7 what the City Council should do.	15:56:39
8 surplus undistributed earnings. Copy of selected pages	15:53:03	8 BY MR. KLEVENS:	15:56:42
9 from the Vincent and Elkins report dated September 16th,	15:53:09	9 <b>Q. But if -- if the financing of the 13th Check</b>	15:56:42
10 2004.	15:53:18	10 <b>benefit is to be handled in a different way, the City</b>	15:56:45
11 <b>Q. Who selected the pages?</b>	15:53:18	11 <b>Council is going to have to change the Municipal Code,</b>	15:56:47
12 A. From this document?	15:53:22	12 <b>right?</b>	15:56:49
13 <b>Q. Yes.</b>	15:53:24	13 MR. CHUNG: Objection; calls for a legal	15:56:49
14 A. I did.	15:53:25	14 conclusion.	15:56:51
15 <b>Q. Okay.</b>	15:53:26	15 BY MR. KLEVENS:	15:56:52
16 A. And it includes Pages 31 through 56. It's	15:53:27	16 <b>Q. Isn't that your understanding?</b>	15:56:52
17 entitled "The evolution of the SDCERS funding deficit,	15:53:39	17 A. Presumably.	15:56:54
18 Part 1. The snake in the garden of SDCERS. The	15:53:39	18 <b>Q. You don't have a contrary understanding, do</b>	15:56:55
19 seductive concept of surplus earnings."	15:53:42	19 <b>you?</b>	15:56:58
20 <b>Q. Now, so was the 13th Check benefit financed</b>	15:53:47	20 A. No.	15:56:58
21 <b>through the use of surplus undistributed earnings?</b>	15:53:57	21 <b>Q. Now, you don't know whether Mr. Esuchanko</b>	15:56:58
22 A. It's my understanding, yes.	15:54:00	22 <b>calculated this \$159 million correctly for the service</b>	15:57:03
23 <b>Q. Okay. And is there something wrong with that?</b>	15:54:01	23 <b>retirement factor; is that right?</b>	15:57:05
24 A. Yes. To the extent that they're -- that the	15:54:04	24 A. I didn't try to recalculate his number.	15:57:07
25 concept of surplus undistributed earnings or surplus	15:54:06	25 <b>Q. So you don't know if it's right?</b>	15:57:11
	138		140

1 earnings is not a valid concept.	15:54:09	1 A. I haven't tried to recalculate it.	15:57:13
2 <b>Q. And is that an opinion of yours?</b>	15:54:11	2 <b>Q. So doesn't that mean that you don't know if it</b>	15:57:16
3 A. It's an issue in this case. And my opinions	15:54:12	3 <b>is correct?</b>	15:57:20
4 related to that are to simply compile and understand the	15:54:22	4 A. I'm relying on Mr. Esuchanko's calculations in	15:57:22
5 information that I just referred to.	15:54:28	5 that regard.	15:57:25
6 MR. KLEVENS: Could I have my question read	15:54:30	6 <b>Q. Right. So doesn't that mean that you don't</b>	15:57:25
7 back, please, and see if you could answer it.	15:54:32	7 <b>know whether or not Mr. Esuchanko's calculation is</b>	15:57:28
8 (Record read.)	15:54:34	8 <b>correct?</b>	15:57:31
9 MR. CHUNG: I believe it's the question after	15:54:55	9 A. I haven't attempted to duplicate his	15:57:31
10 that.	15:54:57	10 calculation.	15:57:33
11 (Record read.)	15:54:58	11 <b>Q. So what's the answer to my question?</b>	15:57:34
12 BY MR. KLEVENS:	15:54:58	12 MR. CHUNG: Counsel, I think he's giving you	15:57:38
13 <b>Q. Right. So my question to you, sir, is there</b>	15:55:15	13 the best answer he can.	15:57:40
14 <b>something wrong with using surplus undistributed</b>	15:55:17	14 BY MR. KLEVENS:	15:57:41
15 <b>earnings to finance the 13th Check benefit?</b>	15:55:21	15 <b>Q. You don't know whether it's right or it's</b>	15:57:42
16 A. According to the City's financial statements	15:55:24	16 <b>wrong; isn't that true?</b>	15:57:43
17 and the other documents I just referred, yes.	15:55:25	17 A. I haven't attempted to recalculate it.	15:57:44
18 <b>Q. So that's not an opinion of yours; it's an</b>	15:55:27	18 <b>Q. I understand. When you're in the courtroom,</b>	15:57:47
19 <b>opinion of others that you think -- it's an opinion you</b>	15:55:30	19 <b>you're going to have to answer the question. So why</b>	15:57:50
20 <b>think others hold and that you're relying on, is that</b>	15:55:33	20 <b>don't you practice right now and give me an answer to</b>	15:57:53
21 <b>it?</b>	15:55:35	21 <b>the question.</b>	15:57:54
22 A. Yes.	15:55:35	22 MR. CHUNG: Counsel, please don't harass the	15:57:54
23 <b>Q. And is the use of surplus undistributed</b>	15:55:37	23 witness. He's giving you the best answer he can. If	15:57:56
24 <b>earnings to finance the 13th Check benefit something</b>	15:55:56	24 <b>you don't like it, you know, it's unfortunate.</b>	15:57:58
25 <b>that is provided for in the San Diego Municipal Code?</b>	15:56:02	25 <b>it?</b>	15:57:58
	139		141

1 BY MR. KLEVENS:	15:57:58	1 A. Corbett calculation has three elements to it.	16:00:28
2 Q. I understand that you didn't attempt to	15:58:01	2 The first is described on Page 3 of Mr. Esuchanko's	16:00:50
3 recalculate it. I get that. I'm asking you a different	15:58:02	3 memo, in the second full paragraph at the second line.	16:00:56
4 question. I didn't ask you did you attempt to	15:58:05	4 This is the amount of liability created by past services	16:01:02
5 recalculate it. I asked you do you know whether it's	15:58:08	5 of June 30th, 2005. That's the 115 million. The second	16:01:05
6 correct. What's the answer to that question?	15:58:11	6 number of 52.1 million is described on Page 14. That's	16:01:28
7 MR. CHUNG: Objection.	15:58:15	7 the money that's already been paid out, brought forward	16:01:33
8 THE WITNESS: My answer --	15:58:15	8 at the funds rate of return. That's 52.1 million. The	16:01:41
9 MR. CHUNG: Asked and answered.	15:58:16	9 58.9 million would be the contingent benefits for the	16:01:46
10 THE WITNESS: My answer in that regard is that	15:58:16	10 future.	16:01:50
11 I'm relying on Mr. Esuchanko for the accuracy of the	15:58:18	11 Q. What does that mean?	16:01:51
12 number.	15:58:21	12 A. These are benefits that have been described as	16:01:52
13 BY MR. KLEVENS:	15:58:21	13 contingent going back again to concept of surplus	16:01:58
14 Q. And you don't know whether he did it right or	15:58:21	14 earnings. That they're paid out of surplus earnings.	16:02:02
15 not; is that right?	15:58:24	15 Q. Why -- why did you include Corbett in this	16:02:06
16 A. I'm relying on him.	15:58:24	16 calculation?	16:02:14
17 Q. And if he made a mistake, you're relying on a	15:58:27	17 A. I was asked to.	16:02:14
18 mistake; is that right?	15:58:31	18 Q. Who asked you to do that?	16:02:17
19 A. Correct. And if he did it accurately, then	15:58:32	19 A. The City.	16:02:18
20 I'm relying on something that's accurate.	15:58:34	20 Q. And did they tell you why?	16:02:19
21 Q. And you don't know one way or the other?	15:58:35	21 A. No.	16:02:21
22 A. I'm relying on him.	15:58:37	22 Q. Did they tell you that they were not	16:02:21
23 Q. And the same is true for the MP2 calculation	15:58:38	23 challenging the Corbett benefits?	16:02:25
24 of the 177 million; is that right?	15:58:44	24 A. That's my understanding.	16:02:27
25 A. Correct.	15:58:46	25 Q. That the City's not challenging the Corbett	16:02:30
	142		144
1 Q. And where is that set forth?	15:58:47	1 benefits?	16:02:33
2 A. The MP2 calculation would be mentioned at	15:58:49	2 A. Correct.	16:02:33
3 Page 4 of Mr. Esuchanko's analysis in the second	15:59:03	3 Q. So did you ask them, "Well, why should I be	16:02:34
4 paragraph in the second line.	15:59:07	4 including this in my calculation?"	16:02:37
5 Q. Well, it just says the number. Is that it?	15:59:10	5 A. No.	16:02:38
6 But, I mean, how did he calculate it?	15:59:13	6 Q. Why not?	16:02:38
7 A. As I stated earlier, the formula, the	15:59:15	7 A. I was asked to make that calculation.	16:02:39
8 underlying formula is not stated in this document.	15:59:20	8 Q. So you just do what you're asked to do,	16:02:42
9 Q. You don't know how he did it; is that true?	15:59:22	9 basically?	16:02:47
10 A. Correct.	15:59:26	10 A. I was asked to come up with financial factors	16:02:47
11 Q. Where did the \$143.7 million figure for	15:59:27	11 that relate to each of these items that are listed on	16:02:56
12 inadequate contributions come from?	15:59:49	12 the first page of Exhibit 11.	16:02:59
13 A. That was calculated by Mr. Esuchanko. It's	15:59:50	13 MR. CHUNG: Tab 11.	16:03:03
14 described on -- starting on Page 6 of his memo.	15:59:54	14 THE WITNESS: Tab 11.	16:03:04
15 Q. If those amounts are inadequate, those would	16:00:00	15 BY MR. KLEVENS:	16:03:05
16 be amounts that would be owed by the City to the	16:00:11	16 Q. The other benefits are all benefits that the	16:03:05
17 Retirement Board; is that right?	16:00:13	17 City is challenging; isn't that right? MP1, MP2, isn't	16:03:07
18 MR. CHUNG: Objection; calls for a legal	16:00:14	18 that your understanding?	16:03:12
19 conclusion.	16:00:16	19 A. Yes.	16:03:13
20 THE WITNESS: That would be the calculation of	16:00:18	20 Q. And your understanding is the City's not	16:03:13
21 the inadequate funding.	16:00:20	21 challenging Corbett?	16:03:16
22 BY MR. KLEVENS:	16:00:21	22 A. That's my understanding.	16:03:17
23 Q. By the City?	16:00:21	23 Q. So what's the purpose of this calculation?	16:03:18
24 A. By the City, correct.	16:00:25	24 A. I believe I already answered that.	16:03:20
25 Q. What's the Corbett calculation?	16:00:26	25 Q. What's the answer?	16:03:22
	143		145

1	A. The answer is I was asked to do that.	16:03:22	1	A. I didn't have that information, no.	16:05:54
2	<b>Q. So what's the purpose of it?</b>	16:03:24	2	<b>Q. Were you advised that the Charter provided</b>	16:05:59
3	A. I don't know.	16:03:26	3	<b>that in San Diego, namely that nine of the 13 members of</b>	16:06:02
4	<b>Q. And what's the last item?</b>	16:03:27	4	<b>the Board had to be people who had an interest in the --</b>	16:06:06
5	A. The last item would relate to the amounts that	16:03:36	5	<b>in the benefits either because they were employees or</b>	16:06:10
6	are attributed to the board members listed -- SDCERS	16:03:47	6	<b>retirees?</b>	16:06:13
7	board members that are listed on Page 15 of	16:03:52	7	A. I believe that's true.	16:06:14
8	Mr. Esuchanko's memo.	16:03:55	8	<b>Q. So how come this list is -- contains fewer</b>	16:06:15
9	<b>Q. Where did that list come from?</b>	16:03:57	9	<b>names than nine out of the 13 who were on the Board in</b>	16:06:20
10	A. The list of employees was provided by the	16:03:58	10	<b>1996 and nine of 13 who were on the board in 2002?</b>	16:06:23
11	City, to the best of my understanding.	16:04:04	11	A. I don't know.	16:06:27
12	<b>Q. Is this all the people who sat on the Board</b>	16:04:06	12	MR. CHUNG: Counsel, do you mind if we take a	16:06:39
13	<b>who were beneficiaries of the retirement system? What</b>	16:04:09	13	<b>two-minute break. I need to call my wife real quick.</b>	16:06:42
14	<b>tab did you turn to?</b>	16:04:35	14	<b>It's 4:00.</b>	16:06:49
15	A. I just turned to Tab 16, which has the	16:04:36	15	MR. KLEVENS: Okay.	16:06:46
16	information on these people.	16:04:39	16	THE VIDEOGRAPHER: We are off the record. The	16:06:47
17	<b>Q. Yeah. Where did the list come from? City</b>	16:04:40	17	<b>time is 4:05 p.m.</b>	16:06:48
18	<b>provided all those?</b>	16:04:44	18	(Recess taken.)	16:06:53
19	A. That list was provided by the City.	16:04:44	19	THE VIDEOGRAPHER: We are back on the record.	16:11:32
20	<b>Q. What's the answer to my question?</b>	16:04:47	20	<b>The time is 4:09 p.m.</b>	16:11:43
21	A. What was your question again?	16:04:48	21	BY MR. KLEVENS:	16:11:46
22	<b>Q. Are these the only people who sat on the</b>	16:04:49	22	<b>Q. Mr. Gabrielson, still looking at the first</b>	16:12:12
23	<b>Retirement Board who were beneficiaries of the</b>	16:04:52	23	<b>page of Tab 11.</b>	16:12:18
24	<b>retirement system?</b>	16:04:54	24	A. Sure.	16:12:20
25	MR. CHUNG: Objection; vague and ambiguous as	16:04:55	25	<b>Q. The Corbett amounts, those are all amounts</b>	16:12:20
		146			148
1	to time.	16:04:56	1	<b>that were tacked on to MPI benefits, correct?</b>	16:12:34
2	BY MR. KLEVENS:	16:04:58	2	MR. CHUNG: Objection; lacks foundation.	16:12:47
3	<b>Q. At the time that they sat on the board, are</b>	16:04:59	3	THE WITNESS: I don't know the answer to that.	16:12:58
4	<b>these the only people who were beneficiaries?</b>	16:05:01	4	BY MR. KLEVENS:	16:12:59
5	MR. CHUNG: Again, same objections; vague and	16:05:03	5	<b>Q. Did you review the Corbett settlement?</b>	16:13:05
6	ambiguous as to what time.	16:05:05	6	A. Yes.	16:13:09
7	THE WITNESS: My best understanding is that	16:05:08	7	<b>Q. And judgment?</b>	16:13:10
8	during the time period at issue in the case that these	16:05:10	8	A. Yes. It's in my file.	16:13:10
9	would be the people that sat on the Board that were	16:05:15	9	<b>Q. And -- and the -- the settlement involved</b>	16:13:12
10	beneficiaries of the retirement system.	16:05:18	10	<b>paying additional amounts to retirees over and above the</b>	16:13:17
11	BY MR. KLEVENS:	16:05:19	11	<b>amounts they were getting prior to the Corbett</b>	16:13:22
12	<b>Q. The only people, is that it?</b>	16:05:19	12	<b>settlement, correct?</b>	16:13:26
13	A. That's my best understanding.	16:05:20	13	A. Correct.	16:13:27
14	<b>Q. What's that understanding based on?</b>	16:05:21	14	<b>Q. 10 percent amount, 7 percent amount, correct?</b>	16:13:27
15	A. Information that's been given to me.	16:05:23	15	A. Correct.	16:13:31
16	<b>Q. By who?</b>	16:05:26	16	<b>Q. And if somebody was receiving -- if somebody</b>	16:13:31
17	A. By the City.	16:05:28	17	<b>was in DROP, they would get an increase, correct?</b>	16:13:34
18	<b>Q. Who?</b>	16:05:28	18	A. Correct.	16:13:36
19	A. The City Attorney's office.	16:05:29	19	<b>Q. If somebody was on disability, they would get</b>	16:13:37
20	<b>Q. Mr. Aguirre told you that?</b>	16:05:32	20	<b>an increase?</b>	16:13:39
21	A. I don't know that he specifically told me	16:05:34	21	A. As best I recall.	16:13:40
22	that.	16:05:38	22	MR. CHUNG: Just generally object to the	16:13:42
23	<b>Q. Did you have information that in both 2002 and</b>	16:05:38	23	<b>previous questions that document speaks for itself.</b>	16:13:43
24	<b>1996 that nine of the 13 members who sat on the</b>	16:05:46	24	BY MR. KLEVENS:	16:13:46
25	<b>Retirement Board were beneficiaries of the system?</b>	16:05:48	25	<b>Q. And with these Corbett calculations, again,</b>	16:13:51
		147			149

1 you're relying on Mr. Esuchanko; you don't know whether	16:13:54	1 A. Yes.	16:17:10
2 he did it correctly or not?	16:13:57	2 Q. So that's a different calculation of the	16:17:10
3 A. I'm relying on him.	16:13:58	3 figure that Mr. Esuchanko came up with for inadequate	16:17:22
4 Q. He may have done it correctly, or he may made	16:14:00	4 contributions of 14 -- almost 144 million; is that	16:17:28
5 a mistake?	16:14:03	5 right?	16:17:32
6 A. Same answer as before. I'm relying on him.	16:14:04	6 A. Correct.	16:17:32
7 Q. And the answer to my question is he may have	16:14:06	7 Q. And then Tab 16, that listing is something	16:17:32
8 done it correctly, or he may made a mistake, correct?	16:14:09	8 that you wrote down based on something the City told	16:17:47
9 A. It's possible.	16:14:12	9 you?	16:17:50
10 Q. Now, would you turn to Tab 13. What is that	16:14:13	10 A. No. This was information provided by the	16:17:50
11 document?	16:14:33	11 City. All the documents under tab -- is it 16?	16:17:52
12 A. This is a document that reflects the state of	16:14:33	12 Q. Yeah.	16:17:56
13 the calculations as of October 11th, 2006. In	16:14:37	13 A. Yes.	16:17:57
14 calculating the net pension obligation for the City of	16:14:44	14 Q. So the -- the actual document, the first page	16:17:58
15 San Diego. And this was a document that was provided by	16:14:49	15 is actually provided by the City?	16:18:01
16 someone from the City. And I don't recall their name,	16:14:56	16 A. Yes.	16:18:02
17 who was working with the auditors in this regard.	16:14:58	17 Q. And then these are documents taken from the	16:18:02
18 Q. Well, did you use this in some way?	16:15:03	18 individual's files with the City? Their pay -- their	16:18:18
19 A. No.	16:15:09	19 pay so forth, is that it?	16:18:23
20 Q. Did Mr. Esuchanko use this?	16:15:09	20 A. Yes.	16:18:24
21 A. I don't believe so.	16:15:22	21 Q. And is this the way the \$1.9 million was	16:18:29
22 Q. So why is it in your binder?	16:15:23	22 calculated, on Tab 11?	16:18:44
23 A. Because it was a document provided to me in	16:15:26	23 A. This is part of the background information	16:18:47
24 this case. And it is a calculation of the net pension	16:15:31	24 necessary to do that, yes.	16:18:51
25 obligation.	16:15:36	25 Q. Who did the 1.9 calculation?	16:18:52
	150		152
1 Q. But you don't know by whom?	16:15:39	1 A. Mr. Esuchanko.	16:18:56
2 A. I believe I explained where -- where this came	16:15:40	2 Q. Do you know how he did these calculations?	16:18:57
3 from. This -- this is a document in progress that's	16:15:46	3 A. I don't know the specific formulas, no.	16:19:18
4 being calculated in connection with the June 30th,	16:15:49	4 Beyond what he says on Page 15 of his analysis.	16:19:27
5 2005 -- or 2003 audit.	16:15:54	5 Q. And then what's the last part of Tab 16?	16:19:33
6 Q. What's a net pension obligation mean?	16:15:56	6 There's another listing of the same list of the board	16:20:26
7 A. In general, a net pension obligation is the	16:15:59	7 members, do you see that? And then -- then some kind of	16:20:30
8 cumulative amount on the financial statements of the	16:16:01	8 a table. Goes on for several pages.	16:20:36
9 City reflecting the difference between what the	16:16:09	9 A. This -- it would just be a list that shows the	16:20:59
10 actuaries had to pay in a given year and the amount that	16:16:19	10 classification numbers, the job title or class title and	16:21:39
11 was actually paid.	16:16:19	11 the retirement group that -- that those job titles fall	16:21:43
12 Q. You mean this is another way of calculating	16:16:19	12 into.	16:21:48
13 the City's failure to pay adequate contributions?	16:16:22	13 Q. This just again relates to the -- the	16:21:49
14 MR. CHUNG: Objection; calls for a legal	16:16:29	14 information that was supplied pertaining to these	16:21:52
15 conclusion, lacks foundation.	16:16:26	15 members of the Retirement Board who were singled out by	16:21:58
16 THE WITNESS: In general, I believe that it is	16:16:28	16 the City?	16:22:03
17 another way to do it. It's more of an accountant's type	16:16:31	17 A. Correct.	16:22:02
18 calculation than an actuarial calculation.	16:16:34	18 Q. And then Tab 18, what's that?	16:22:02
19 BY MR. KLEVENS:	16:16:36	19 A. Tab 18 is excerpts, audio excerpts from	16:22:19
20 Q. What's the amount of the net pension	16:16:36	20 certain SDCERS board meetings. This was a document that	16:22:29
21 obligation reflected on this document?	16:16:38	21 was in my file was provided by the City.	16:22:28
22 A. As of June 30th, 2003, it's \$158,000,558. I'm	16:16:40	22 Q. So the City picked out these particular	16:22:32
23 sorry. 158,558,000.	16:16:56	23 snippets; is that right?	16:22:37
24 Q. So that's the figure that says "NPO end of	16:17:04	24 A. Yes.	16:22:39
25 year" at line 10, and then you read across?	16:17:07	25 Q. Did you rely on these somewhat?	16:22:39
	151		153

1 A. I relied on for background.	16:22:51	1 done up to now?	16:26:43
2 Q. But you don't know whether these individuals	16:22:53	2 A. No.	16:26:44
3 said other things at these same meetings or different	16:22:56	3 Q. I beg your pardon?	16:26:44
4 meetings, I take it?	16:22:59	4 A. No.	16:26:45
5 A. I have the complete transcripts of some of the	16:23:00	5 Q. What -- what other work have you done?	16:26:45
6 meetings, but not all the meetings.	16:23:04	6 A. As I indicated to you, there's several boxes	16:26:48
7 Q. Did you determine whether these excerpts were	16:23:05	7 of binders behind you, which I've gone through. In some	16:26:50
8 an accurate representation of what the person said	16:23:10	8 cases made notes on the documents or highlighted certain	16:26:50
9 overall at the meeting?	16:23:13	9 items.	16:26:58
10 A. I didn't make any attempt to do that.	16:23:14	10 Q. But you attempted to put the key documents	16:26:58
11 Q. So you don't know whether it is or it isn't?	16:23:16	11 upon which you based your work in Binder 602; is that	16:27:01
12 A. No.	16:23:19	12 right?	16:27:05
13 Q. And then what's Tab 19 about?	16:23:19	13 A. Yes.	16:27:06
14 A. Tab 19 is a compilation of information and	16:23:47	14 MR. CHUNG: Counsel, your question asked	16:27:06
15 e-mails related to Rick Roeder.	16:24:03	15 602-A. And the follow-up question is referring to 602.	16:27:09
16 Q. And who made the compilation?	16:24:07	16 So I believe you meant 602.	16:27:12
17 A. The City.	16:24:09	17 MR. KLEVENS: Yeah.	16:27:16
18 Q. So they picked out those parts of Rick	16:24:11	18 BY MR. KLEVENS:	16:27:19
19 Roeder's communications that they wanted you to see; is	16:24:17	19 Q. And so what opinions do you have intend to	16:27:22
20 that right?	16:24:20	20 offer in this case?	16:27:29
21 A. Yes.	16:24:20	21 A. I would offer as my opinions the summary	16:27:31
22 MR. CHUNG: Objection; calls for speculation.	16:24:23	22 that's under Tab 11, and any other topics that -- that	16:27:40
23 THE WITNESS: They provided me with these	16:24:25	23 come up under -- in the trial that relate to anything	16:27:54
24 documents, yes.	16:24:27	24 that I've testified to so far. Or included in this	16:27:58
25 ///	16:24:29	25 binder, or included in any of my binders.	16:28:02
	154		156

1 BY MR. KLEVENS:	16:24:29	1 Q. Are there any opinions that you expect to	16:28:05
2 Q. Did you talk to Mr. Esuchanko about	16:24:39	2 offer at the trial of this matter that you haven't	16:28:09
3 Mr. Roeder's work?	16:24:43	3 expressed here in this deposition?	16:28:12
4 A. In what regard?	16:24:44	4 A. Not that come to mind right now.	16:28:14
5 Q. Any regard.	16:24:56	5 Q. And so the -- the key opinions that you intend	16:28:18
6 A. Well, Mr. Roeder's name came up, obviously,	16:24:58	6 to offer are the ones reflected on this one page?	16:28:26
7 because he was the actuary for the system for a long	16:25:10	7 A. Those would be the key ones, yes.	16:28:29
8 period of time. So, yes, we discussed it.	16:25:14	8 MR. LEONE: For the record, that's 602-A, Tab	16:28:32
9 Q. And what did Mr. Esuchanko say about	16:25:16	9 11, first page.	16:28:35
10 Mr. Roeder's work?	16:25:20	10 BY MR. KLEVENS:	16:28:36
11 A. In terms of what?	16:25:21	11 Q. Correct?	16:28:36
12 Q. In terms of anything, whether he -- I mean,	16:25:25	12 A. Yes.	16:28:37
13 Mr. Esuchanko is an actuary, right?	16:25:28	13 Q. And each and every one of those opinions	16:28:37
14 A. Yes.	16:25:31	14 depends for its accuracy on Mr. Esuchanko?	16:28:40
15 Q. And Mr. Roeder's an actuary; is that right?	16:25:31	15 A. I'm relying on Mr. Esuchanko, yes.	16:28:46
16 A. Correct.	16:25:34	16 Q. And what is it that you intend to opine in	16:28:48
17 Q. Did Mr. Esuchanko have any criticism of	16:25:34	17 connection with this case that's different from	16:29:01
18 Mr. Roeder's work?	16:25:37	18 Mr. Esuchanko?	16:29:09
19 A. I believe he did have some criticisms. But I	16:25:38	19 A. I don't know what I'm going to be asked on the	16:29:10
20 didn't make any attempt to keep a list or retain that	16:25:51	20 stand. And I don't know what he's going to be asked on	16:29:12
21 information.	16:25:54	21 the stand.	16:29:14
22 Q. Do you know what his criticisms were, or not?	16:25:55	22 Q. But the work is identical, because every	16:29:14
23 A. As I sit here at the moment, I don't.	16:25:58	23 single thing that you list on Page 1 of Tab 11 of 602.	16:29:18
24 Q. Does -- do the documents that we've looked at	16:26:01	24 every single thing is based on work that Mr. Esuchanko	16:29:27
25 here in 602-A, do they reflect all the work that you've	16:26:38	25 did; and the figures were derived by Mr. Esuchanko, each	16:29:32
	155		157



1 one of these figures, correct?	16:29:35	1 A. It's my understanding.	16:34:59
2 A. That's true.	16:29:37	2 Q. Anything else?	16:35:05
3 Q. Have you destroyed any documents in connection	16:29:39	3 A. The increase in the service retirement factor	16:35:05
4 with your work?	16:30:06	4 under MP2. I may not have mentioned that.	16:35:12
5 A. No.	16:30:06	5 Q. You did.	16:35:15
6 Q. Are there any drafts that you prepared that	16:30:07	6 A. Okay. That's my general understanding that --	16:35:16
7 you destroyed?	16:30:11	7 those are my words, not somebody else's.	16:35:18
8 A. No.	16:30:12	8 Q. They want to keep Corbett in place?	16:35:20
9 Q. Have you been -- have you been asked to do any	16:30:12	9 MR. CHUNG: Objection; calls for speculation.	16:35:23
10 work in connection with calculating the amounts of	16:30:36	10 THE WITNESS: I don't know one way or the	16:35:27
11 contributions by employees to the retirement system?	16:30:40	11 other on that. I -- I understood generally that Corbett	16:35:28
12 A. No.	16:30:46	12 wasn't at issue.	16:35:33
13 Q. Have you been asked to do any work that would	16:30:47	13 BY MR. KLEVENS:	16:35:34
14 relate to recalculating retirement benefits if any	16:30:59	14 Q. And have you had any discussion with the --	16:35:34
15 benefits under MP1 or MP2 were to be invalidated?	16:31:07	15 any representative of the City about how you keep	16:35:37
16 A. No.	16:31:12	16 Corbett in place if you take away the MP1 benefits that	16:35:40
17 Q. Have you done anything to look the	16:31:12	17 you've described?	16:35:45
18 negotiations with the labor unions that took place after	16:32:23	18 A. No.	16:35:47
19 1996 and before 2002 in that interim period?	16:32:29	19 Q. Have you talked to Mr. Esuchanko about that?	16:35:48
20 A. No.	16:32:34	20 A. No.	16:35:50
21 Q. Have the individuals at the City with whom	16:32:34	21 Q. Have you talked to anybody about that?	16:35:50
22 you've been communicating for the past several months,	16:33:05	22 A. No.	16:35:52
23 have they indicated to you what they're seeking to	16:33:09	23 Q. And have you discussed with anyone at the City	16:35:53
24 accomplish in this litigation in terms of invalidating	16:33:17	24 about whether the intention is to take away these	16:36:04
25 benefits?	16:33:20	25 benefits for past service or only for future service or	16:36:07
	158		160
1 A. I'm generally aware of that.	16:33:20	1 both?	16:36:16
2 Q. And what is that? What are they seeking to	16:33:24	2 A. Haven't discussed that.	16:36:16
3 invalidate?	16:33:31	3 Q. Have you talked to Mr. Esuchanko about whether	16:36:17
4 A. I can only give you my own interpretation.	16:33:32	4 his calculations take into account past service and --	16:36:23
5 Q. That's what I just asked you for.	16:33:35	5 and future service?	16:36:26
6 A. I believe they're seeking to invalidate the	16:33:37	6 A. The assumptions for his calculations are laid	16:36:27
7 benefits that were created under MP1 to include the	16:33:44	7 out in his 15-page summary.	16:36:31
8 service retirement factor, the 20 percent disability	16:33:50	8 Q. Yeah. And so --	16:36:34
9 offset, the disability factor increase, the --	16:33:52	9 A. With regard to all of these numbers.	16:36:35
10 Q. Slow, slow, slow down. Service retirement	16:33:55	10 Q. And so what did he do with it?	16:36:37
11 factor. Go ahead.	16:33:58	11 A. The calculations that he made relate -- except	16:36:40
12 A. 20 percent disability offset. Disability	16:33:59	12 in cases where specifically delineated, this relates to	16:36:43
13 factor increase. Purchase of service credits. DROP	16:34:08	13 amounts that are embedded in the 1.394 billion	16:36:48
14 program, 13th Check.	16:34:11	14 underfunding that's in place right now. The un -- the	16:36:56
15 Q. Just the increase in the 13th Check, or the	16:34:19	15 unfunded liability.	16:36:59
16 whole 13th Check?	16:34:21	16 Q. There's a difference between unfunded	16:37:00
17 A. I believe it would be the increase.	16:34:22	17 liability and underfunding, right?	16:37:07
18 Q. What else?	16:34:24	18 A. What I'm talking about is the 1.394 billion	16:37:09
19 A. Under MP2, the service retirement factor. The	16:34:27	19 unfunded actuarial accrued liability.	16:37:12
20 under MP2 the union presidents' --	16:34:41	20 Q. And who calculated that amount?	16:37:15
21 Q. Incum --	16:34:47	21 A. That amount that I'm using is the amount that	16:37:18
22 A. -- benefits.	16:34:48	22 Cheiron has calculated.	16:37:22
23 Q. Incumbent presidents' retirement calculation?	16:34:49	23 Q. And that's the amount that would have to be	16:37:25
24 A. Right. Presidential leave.	16:34:54	24 paid if retirement benefits were paid to all people who	16:37:32
25 Q. Presidential leave in addition?	16:34:57	25 were working for the City now, all the way out to the	16:37:36
	159		161

1 next 20 or 30 years?	16:37:40	1 five minutes after we start again, and we'll be done. I	16:40:44
2 A. No.	16:37:42	2 just need some time.	16:40:48
3 Q. What is it?	16:37:43	3 THE VIDEOGRAPHER: We are off the record. The	16:40:49
4 A. That's the amount that would take to put back	16:37:44	4 time is 4:38 p.m.	16:40:50
5 into the plan so that the plan is 100 percent funded	16:37:46	5 (Recess taken.)	16:40:56
6 today for the benefits that are accrued today. When I	16:37:50	6 THE VIDEOGRAPHER: We are back on the record.	16:44:17
7 say today, I mean June 30th, '05.	16:37:53	7 Time is 4:42 p.m.	16:44:40
8 Q. So that assumes that everybody who's working	16:37:56	8	16:44:42
9 for the City would retire today?	16:38:07	9 EXAMINATION BY MR. CHUNG:	16:44:42
10 A. Not really. What it assumes is that the City	16:38:11	10 Q. Mr. Gabrielson, you've been designated	16:44:43
11 has to make payments into the pension plan every year	16:38:17	11 obviously as an expert for the City of San Diego in this	16:44:45
12 with certain assumptions as to what's going to happen to	16:38:21	12 case; is that correct?	16:44:47
13 that money once it's in there. One assumption being	16:38:24	13 A. Yes.	16:44:48
14 that it will earn 8 percent interest. So on an annual	16:38:26	14 Q. And what I have here is a copy of your	16:44:49
15 basis the City has to make contributions. The actuary	16:38:30	15 designation by the City in which it states, he will	16:44:54
16 tells the City how much needs to be funded on an annual	16:38:34	16 address issues related to SDCERS and the City's	16:44:58
17 basis. That's part of the situation. But if you get	16:38:38	17 comprehensive financial statements and related pension	16:45:01
18 down to the bottom line, the question is as of	16:38:42	18 finance and accounting issues.	16:45:03
19 June 30th, '05, how much more would the City need to put	16:38:45	19 He will further provide testimony relating to	16:45:05
20 into the system so it's 100 percent funded at that	16:38:49	20 damages assessment, forensic accounting and analysis of	16:45:07
21 point. But benefits continue to accrue after that. So	16:38:53	21 the affects of MP1 and MP2. He will also testify as to	16:45:11
22 the City would need to continue to make contributions	16:38:56	22 accounting and auditing issues related to the illegal	16:45:15
23 after that date.	16:38:59	23 benefits and all related opinions and conclusions and	16:45:18
24 Q. And what's the relevance of 100 percent	16:39:01	24 the basis thereof.	16:45:20
25 funding?	16:39:16	25 At the time you took this engagement, was	16:45:21
	162		164
1 A. Well, the 100 percent funding would mean that	16:39:16	1 that -- during your engagement was that your	16:45:24
2 the City had met all its obligations to date in terms of	16:39:25	2 understanding of what you might be asked to testify on	16:45:27
3 fully funding the plan for the benefits that are accrued	16:39:29	3 behalf of the City?	16:45:29
4 at that particular point in time.	16:39:33	4 A. Yes.	16:45:32
5 Q. But, I mean, why do you use 100 percent	16:39:34	5 Q. Actually, I don't think that question was	16:45:32
6 instead of 85 percent or 90 percent or some other	16:39:39	6 grammatically correct. I don't have copies if you want	16:45:36
7 percent?	16:39:42	7 to make this exhibit. I don't think it's necessary.	16:45:40
8 A. Because that's the way the unfunded actuarial	16:39:43	8 MR. LEONE: Well, as long as you read the part	16:45:44
9 accrued liability is calculated.	16:39:46	9 about him be prepared to testimony at depositions, I	16:45:47
10 Q. That's an actuarial determination, that's not	16:39:48	10 don't have any problem with it.	16:45:51
11 something you do, right?	16:39:51	11 MR. CHUNG: Okay. Let me just read it in.	16:45:52
12 A. Correct.	16:39:52	12 Mr. Gabrielson has agreed to testify at trial and will	16:45:53
13 Q. So you're again relying on Mr. Esuchanko for	16:39:52	13 be sufficiently familiar with the pending litigation to	16:45:55
14 the relevance of 100 percent?	16:39:57	14 submit a meaningful oral deposition, including any	16:45:58
15 A. Well, my general understanding of how defined	16:39:58	15 opinion and its bases, and that he is expected to give	16:46:00
16 benefit pension plans work.	16:40:02	16 at trial. Mr. Gabrielson's hourly fee for deposition is	16:46:03
17 Q. But this is the first such defined benefit	16:40:05	17 350 per hour. And the consulting fees are 275 per hour.	16:46:06
18 pension plan, at least public plan, litigation with	16:40:13	18 That's coming from Page 3 of the designation.	16:46:10
19 which you've been involved?	16:40:18	19 MR. LEONE: And that was the witness's	16:46:13
20 A. Yes.	16:40:20	20 understanding?	16:46:15
21 MR. KLEVENS: I think those are my questions.	16:40:24	21 BY MR. CHUNG:	16:46:15
22 MR. LEONE: I don't have any.	16:40:26	22 Q. And was that your understanding?	16:46:16
23 MR. CHUNG: I just got a few.	16:40:28	23 A. Yes.	16:46:17
24 Actually, can we take five minutes and let me	16:40:38	24 Q. Mr. Gabrielson, are there instances where a	16:46:19
25 organize. I will take probably no more than	16:40:41	25 CPA can rely on another professional for his opinion or	16:46:23
	163		165

1 work?	16:46:26	1 asked to give in this case or expect to be asked to give	16:49:22
2 A. Certainly.	16:46:27	2 in this case that you didn't testify about in this	16:49:24
3 Q. And can you tell me, are there any GAAP rules	16:46:27	3 deposition here today?	16:49:28
4 that potentially would elaborate on that situation?	16:46:31	4 A. Not that I'm aware of.	16:49:29
5 A. Yes.	16:46:34	5 Q. Is there any work that you've done that	16:49:30
6 Q. And do you have a specific rule in mind?	16:46:34	6 relates to any opinions that you haven't described in	16:49:32
7 A. Yes. I believe it's AU Section 336. I'm	16:46:40	7 this deposition here today?	16:49:37
8 going from memory on that.	16:46:43	8 A. Can I have that one read back.	16:49:38
9 Q. And from your recollection, what are the	16:46:44	9 Q. I'll repeat it. Is there any work that you've	16:49:43
10 criteria for a CPA to rely on another professional when	16:46:48	10 done in connection with your assignment in this case	16:49:46
11 using their data in their -- in their work?	16:46:52	11 that you haven't testified about here today?	16:49:50
12 A. Well, these -- this kind of reliance is called	16:46:57	12 A. I think I testified about this. I don't	16:49:52
13 reliance on a specialist. It would be a situation where	16:47:01	13 recall exactly what I said. Part of my assignment was	16:50:06
14 the CPA needs data that needs to be provided by --	16:47:08	14 to become familiar with the City's financial statements	16:50:09
15 provided by a professional other than a CPA. For	16:47:14	15 during the period at issue here, to become familiar with	16:50:12
16 example, an actuary in that situation, the CPA's	16:47:18	16 SDCERS's financial statements. To become familiar with	16:50:15
17 considerations would be to understand the credentials of	16:47:24	17 the City's budgets during that period of time. And as I	16:50:20
18 the specialist and believe that the -- that the	16:47:31	18 stated before, I did become familiar with those.	16:50:23
19 specialist has the background that would be necessary in	16:47:36	19 Q. But do you have any opinions about the	16:50:25
20 order to do the work that needs to be done.	16:47:40	20 financial statements that you haven't stated here today?	16:50:28
21 The CPA needs to understand the -- they don't	16:47:44	21 A. I don't believe so.	16:50:32
22 review the data that's -- the calculations that are done	16:47:54	22 Q. And do you have any opinions about the budgets	16:50:34
23 by the professional. But they have to have an	16:47:57	23 that you haven't stated here today?	16:50:36
24 understanding of the data that was provided to the	16:47:59	24 A. No.	16:50:38
25 professional and feel that that information was	16:48:03	25 Q. And do you have any opinions about any audits	16:50:38
	166		168
1 reasonably accurate. Once the specialist does their	16:48:06	1 or any other financial records of the City that you	16:49:35
2 calculations or performs whatever work they're asked to	16:48:14	2 haven't made reference to in your deposition?	16:49:37
3 do, if the CPA believes for any reason that their	16:48:17	3 A. I don't believe so.	16:49:40
4 conclusions are unreasonable, then they have to make	16:48:21	4 Q. And are there any calculations that you	16:49:41
5 further assessments before they can rely on that data.	16:48:29	5 yourself have made in this case?	16:50:07
6 Q. Prior to your relying on Mr. Esuchanko's work	16:48:32	6 A. Beyond what I've testified to already?	16:50:08
7 in Tab 11 of Exhibit 602 and 602-A, do you believe that	16:48:36	7 Q. Well, none of the calculations on Page 1 of	16:50:11
8 you have personally satisfied yourself with that kind of	16:48:40	8 exhibit -- of Tab 11 of Exhibit 602 are calculations	16:50:17
9 criteria?	16:48:43	9 that you made, correct?	16:50:21
10 A. Yes.	16:48:43	10 A. I need that question again, please.	16:50:22
11 Q. And in the rule the, AU rule that you	16:48:44	11 (Record read.)	16:50:35
12 mentioned, is an actuary listed as one of those	16:48:48	12 THE WITNESS: I didn't make the underlying	16:50:47
13 professionals that a CPA can specifically rely upon?	16:48:52	13 calculations, no.	16:50:48
14 A. Certainly.	16:48:55	14 BY MR. KLEVENS:	16:50:49
15 MR. CHUNG: That's all the questions I have.	16:48:57	15 Q. So none of the calculations on this Page 1 of	16:50:49
16 MR. KLEVENS: I have a question.	16:48:59	16 Tab 11 of 602 are your calculations, correct?	16:50:52
17	16:49:00	17 A. Correct.	16:50:57
18 FURTHER EXAMINATION BY MR. KLEVENS:	16:49:00	18 Q. So have you made any calculations in this case	16:50:58
19 Q. Mr. Gabrielson, Mr. Chung read from the	16:49:01	19 at all?	16:51:00
20 designation of you as an expert, right?	16:49:06	20 A. No.	16:51:01
21 A. Yes.	16:49:09	21 MR. KLEVENS: Those are my questions. Thank	16:51:12
22 Q. And have you given to me all of your opinions	16:49:10	22 you, sir.	16:51:13
23 on the subjects recited by Mr. Chung that you have?	16:49:15	23 MR. CHUNG: Nothing.	16:51:14
24 A. Yes.	16:49:18	24 MR. LEONE: Stipulate that the reporter and	16:51:16
25 Q. Are there any opinions that you have been	16:49:18	25 videographer can be relieved of their duties.	16:51:20
	167		169

1	MR. CHUNG: Sure. What do you want to do	16:51:22	1 is 4:55 p.m.	16:56:35
2	about signing an original?	16:51:25	2 (Whereupon, the deposition concluded at 4:55 p.m.)	
3	MR. LEONE: That it be done 72 hours before he	16:51:27	3	
4	takes the stand.	16:51:29	4	
5	MR. CHUNG: What is the fastest turnaround	16:51:30	5	
6	time for the court reporter, if I could ask? Not	16:51:32	6	
7	knowing when 72 hours before he's going to take the	16:51:37	7	
8	stand is. So I just --	16:51:39	8	
9	MR. LEONE: It's within your control, not	16:51:40	9	
10	ours.	16:51:42	10	
11	MR. CHUNG: Well, how fast can the court	16:51:43	11	
12	reporter -- court reporter turn this transcript around?	16:51:45	12	
13	THE REPORTER: You want it on the record?	16:51:50	13	
14	MR. KLEVENS: Why don't we talk about it off	16:51:53	14	
15	the record first and decide what we want to put on the	16:51:55	15	
16	record.	16:51:57	16	
17	THE VIDEOGRAPHER: We are off the record. The	16:51:57	17	
18	time is 4:51 p.m.	16:51:58	18	
19	(Discussion off the record.)	16:52:04	19	
20	THE VIDEOGRAPHER: We are back on the record.	16:55:06	20	
21	The time is 4:54 p.m.	16:55:18	21	
22	MR. CHUNG: Off the record all counsel were	16:55:19	22	
23	talking about handling the original transcript of this	16:55:22	23	
24	deposition. It's been asked to stipulate that the court	16:55:24	24	
25	reporter will provide an original copy to the City.	16:55:28	25	
		170		172

1	We'll provide it to the witness eight days from today.	16:55:33	1 STATE OF CALIFORNIA )	
2	And that the City will have the witness turn -- read and	16:55:36	2 ) SS.	
3	notate any changes and sign the original copy within a	16:55:40	3 COUNTY OF SAN DIEGO )	
4	week of its receipt. We'll relieve the court reporter	16:55:43	4	
5	of any duties she might have under the Code. If an	16:55:48	5 The witness in the foregoing deposition	
6	original is lost, a certified copy can be used in its	16:55:50	6 appeared before me, Jeannette K. Jessup, a Certified	
7	place instead.	16:55:54	7 Shorthand Reporter for the State of California.	
8	MR. LEONE: Yep.	16:55:55	8 Said witness then and there at the time and place	
9	MR. CHUNG: Mr. Klevens?	16:55:58	9 previously stated testified under penalty of perjury	
10	MR. KLEVENS: Yeah. And the City will be	16:56:00	10 given on said day.	
11	responsible for making the original transcript available	16:56:01	11 The testimony of the witness and all questions	
12	for trial or at any hearing.	16:56:03	12 and remarks requested by counsel were taken by me in	
13	MR. CHUNG: Yes.	16:56:05	13 shorthand at the time and place therein named and	
14	MR. KLEVENS: And if the original is not	16:56:06	14 thereafter, under my direction, transcribed into	
15	available, then counsel can use their certified copies	16:56:07	15 longhand.	
16	as though they were a signed original.	16:56:13	16 I further certify that I am not of counsel or	
17	MR. CHUNG: That's so stipulated.	16:56:15	17 attorney for either or any of the parties to said	
18	And the only last thing is during the	16:56:16	18 deposition, nor in any way interested in the outcome of	
19	deposition it's been asked that the City make a copy of	16:56:18	19 the cause named in said caption and that I am not	
20	Exhibit 602. So we still will be taking Exhibit 602	16:56:20	20 related to any party thereto.	
21	away today to make a copy and returning the copy to the	16:56:23	21 IN WITNESS WHEREOF, I have hereunto set my	
22	court reporter for inclusion into the original.	16:56:26	22 hand this _____ day of _____, 2006.	
23	MR. LEONE: That's fine.	16:56:29	23	
24	MR. CHUNG: That's it. Thanks guys.	16:56:32	24	
25	THE VIDEOGRAPHER: Off the record. The time	16:56:33	25 JEANNETTE JESSUP, CSR #8573, CRR	
		171		173